TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 86.

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES, PETITIONER,

v.

THE UNITED STATES EX REL. MARIE A. VALENTINE.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PETITION FOR CERTIORARI FILED MAY 31, 1898.
CERTIORARI AND RETURN FILED NOVEMBER 15, 1898.
(16,000.)

1 In the court of appeals of the District of Columbia.

ELLIS H. ROBERTS, TREASURER OF THE UNITED States, appellant,
vs.
THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine. } No. 792.

Supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine
vs.
ELLIS H. ROBERTS, TREASURER OF THE UNITED States. } At law. No. 41621.

UNITED STATES OF AMERICA, *District of Columbia, ss.*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed December 2, 1897. J. R. Young, clerk.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX RELATIONE Marie A. Valentine
vs.
ELLIS H. ROBERTS, AS TREASURER OF THE United States. } Law. No. 41621.

To the honorable the supreme court of the District of Columbia:

Your petitioner, Marie A. Valentine, respectfully, represents:

I. That she is a native-born citizen of the United States and is and was during all the time hereinafter mentioned a resident of Brooklyn, in the State of New York.

II. That the respondent, Ellis Roberts, is, and ever since 1st day of July, 1897, has been, as your petitioner is informed and believes, the Treasurer of the United States and ex officio commissioner of the sinking fund of the District of Columbia, and this proceeding for a mandamus is instituted against him in that capacity.

III. That during all the times mentioned in this petition one Charles E. Evans (an assignor of your petitioner) was a citizen of the United States and a resident of Brooklyn, State of New York, and dur-

2 ing the years 1871 to 1874, inclusive, said Charles E. Evans was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets, and building sewers and making other improvements on the streets and avenues of the District of Columbia, and that he carried on said business under the name of "Evans Concrete Co.," as your petitioner is informed and believes.

IV. That the work done and materials furnished by the said Charles E. Evans under his contracts with duly authorized officers constituting the board of public works of the District of Columbia and their successors amounted to many hundreds of thousands of dollars in the aggregate, much of which remained unpaid on the first day of August, 1874.

V. On or about the first day of August, 1874, certain claims under said contracts of the said Charles E. Evans (doing business, as aforesaid, as Evans Concrete Co.) had been duly submitted for examination and audit, in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20th, 1874, to the board of audit mentioned in said act, and the said board of audit had duly audited certain claims of said Evans and had signed and issued for delivery to said Charles E. Evans two of the certificates in words and figures as follows, to wit:

No. 19429.] [$19,616.25.

DISTRICT OF COLUMBIA, WASHINGTON, *Aug. 1, 1874.*

This certifies that upon examination and audit of claim No. 2396, class No. 4, there is found to be due to the Evans Concrete Co. the sum of nineteen thousand six hundred and sixteen dollars and twenty-five cents, being on account of contract work (settlement claim 1567).

Issued by the board of audit constituted by an act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874.

R. W. TAYLOR,
First Comptroller, U. S. Treasury,
J. M. BRODHEAD,
Second Comptroller, U. S. Treasury,
Board of Audit.

Countersigned and registered by—
GEO. W. BEALL,
Dep. Comptroller, District of Columbia.

No. 8879.] [$909.40.

DISTRICT OF COLUMBIA, WASHINGTON, *Aug. 1, 1874*

This certifies that upon examination and audit claim No. 1126, class No. 2, there is found to be due to Evans Concrete Co. the sum of nine hundred and nine dollars and forty cents, being an account of auditor's certificates.

3 Issued by the board of audit constituted by an act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874.

R. W. TAYLOR,
1st Comptroller, U. S. Treasury,
J. M. BRODHEAD,
2d Comptroller, U. S. Treasury,
Board of Audit.

Countersigned and registered by—
GEO. W. BEALL,
Dep. Comptroller, District of Columbia.

VI. At the time said certificates were issued claims had been made by the Commissioners of the District of Columbia (successors to said board of public works) that said Charles E. Evans was liable for the expense of repairs which were needed on certain pavements laid by him, which claims, however, as it afterwards appeared, were not well founded, as your petitioner is informed and believes.

But the said board of audit of the District of Columbia, upon issuing the board of audit certificates No. 19429 and No. 8879, as aforesaid, instead of delivering the same to said Charles F. Evans, unlawfully withheld them and unlawfully delivered said certificates unto the Commissioners of the District of Columbia, and the said Commissioners of the District of Columbia unlawfully detained and withheld the said certificates from said Charles E. Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements, notwithstanding he, said Evans, had duly given ample security for the performance of all his obligations, as your petitioner is informed and believes.

VII. The said certificates from the time of their date, to wit, from about August 1st, 1874, until about the 9th day of June, 1890, remained deposited in a tin box in the office of the Treasurer of the United States (who was ex officio commissioner of the sinking fund of the District of Columbia), the key of said box being in the possession of said Treasurer, who held it and the contents of said box, subject to the control of the Commissioners of the District of Columbia, as your petitioner is informed and believes.

VII'. Prior to the first day of January, 1881, the said two board of audit certificates had been duly assigned and all the interest of Charles E. Evans and of the Evans Concrete Co. therein had been transferred to one Thomas F. Fisher, a resident of said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated Jan. 16, 1880, and at divers times both before and after said 13th day of January, 1881, demand and request was made by the said Thomas J. Fisher and his assignees hereinafter mentioned for the redemption of said certificates by issuing
4 in the place thereof 3.65 bonds, as provided in sec. 9 — the act of June 16, 1880, as your petitioner is informed and believes.

Said provision of law is as follows:

SEC. 9. That the Treasurer of the United States as ex officio sinking fund commissioner of the District of Columbia is hereby authorized and directed to redeem the outstanding certificates of the late board of audit, created by the act approved June twentieth eighteen hundred and seventy-four, with the interest accrued on said certificates by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia as provided in section seven of the act approved June twentieth, eighteen hundred and seventy-four, entitled "An act for the government of the District of Columbia, and for other purposes," and acts amendatory thereof, said bonds to bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to

be issued by the said seventh section of said act, and shall be signed by the said Treasurer, as ex officio sinking fund commissioner of the District of Columbia, and numbered, countersigned, sealed and registered, as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates.

IX. Refusal was made by the said Treasurer of each and every such demand to issue bonds for said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim as aforesaid to detain said certificates as collateral security.

X. Thereafter, in December, 1880, said Thomas J. Fisher, in pursuance of sections I and II — said act of Congress passed Jan. 16. 1880 (chapter 243), commenced an action in the Court of Claims of the United States against the District of Columbia to recover (in *in* addition to a large number of other claims originally due said Charles F. Evans and transferred by assignment to said Thomas J. Fisher) the amounts certified by said certificates of the board of audit, No. 19429 and No. 8879, to be due said Evans Concrete Co.

XI. During the December term, 1889–'90, of the said Court of Claims of the United States the executors of the will of said Thomas J. Fisher—who had during the pending of said action deceased, leaving a last will and testament, duly admitted to probate in the supreme court of the District of Columbia—were admitted to prosecute the said action as plaintiffs after a suggestion of death of the original plaintiff, duly made upon the record, and the said action was revived and allowed to be prosecuted by Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton as such executors of the will of said Thomas J. Fisher, deceased.

XII. On the 9th day of June, 1890, it was agreed between the parties to the aforesaid action in the Court of Claims, as your petitioner is informed and believes, to dispose of the said action by delivering to the plaintiffs therein the said board of audit certificates No. 19429 and No. 8879 (in respect to which the plaintiffs' claims were at that time conceded), and that the other matters, as to which there was dispute, should be withdrawn from said court by a discontinuance of said action.

XIII. Thereupon and on said 9th day of June, 1890, the Commissioners of the District of Columbia, under the written advice of the Assistant Attorney-General in charge of said case, obtained from the said Treasurer and delivered to the plaintiff's attorney in said action the said two certificates, No. 19429 and No. 8879, which were still held in the Treasurer's custody, subject to the order of said District Commissioners, and the said certificates were so taken by said plaintiffs' attorney into his possession, as your petitioner is informed and believes.

(A copy of said letter of advice to the District Commissioners is hereto annexed, marked "Exhibit A," the original of which will be produced at the hearing of this application.)

XIV. The plaintiff's attorney thereupon presented the said two certificates to the Treasurer of the United States, as your petitioner is informed and believes, and requested him, in his capacity as commissioner of the sinking fund of the District of Columbia, to issue for said certificates 3.65 bonds authorized by an act of Congress approved June 20,

1874, to redeem the same, in pursuance of section 9 of said act of June 16, 1880, which is hereinbefore set forth in paragraph VIII of this petition.

XV. The then Treasurer of the United States, as your petitioner is informed and believes, in view of the lapse of time since said certificates were issued, refused and declined to redeem said certificates or to issue bonds for the payment thereof, or in any way to pay the same, unless a judgment of the said Court of Claims, in which the said action upon said certificates had been brought, should be first entered for his protection.

XVI. Thereupon, to satisfy the objections of said Treasurer and for his protection, as your petitioner is informed and believes, a judgment upon the said two certificates, No. 19429 and No. 8879, was entered in the aforesaid action in favor of the claimants, hereinafter set forth.

XVII. Prior to entering said judgment it became necessary to dispose of a certain claim of one D. M. Davis (who had interposed in the action and consolidated an action of his own and claims against said Evans with said action of Fisher), and by an amicable arrangement it was agreed that out of the sums to be adjudged due on said certificates $900 should be adjudged to said D. M. Davis and received by him in satisfaction of all his claims on the subject-matter, as your petitioner is informed and believes.

XVIII. Prior to the rendering of said judgment by the Court of Claims, in order that the consideration of all other matters should be eliminated from the plaintiff's claim, and that the action and judgment should be solely upon the aforesaid certificates No. 19429 and No. 8879, as your petitioner is informed and believes, the petition of the plaintiff in said action of Thomas J. Fisher so revived and prosecuted by
6 his executors was amended by striking therefrom all reference to other claims of the plaintiff, and action of the court was taken therein as follows:

In the Court of Claims, December term, 1889, to wit, June , 1890.

THOMAS J. FISHER, ASSIGNEE OF CHARLES E. EVANS,
vs.
THE DISTRICT OF COLUMBIA.

Now comes the claimant and moves the court that the petition filed in the above-entitled action December 15, 1890, be amended by striking therefrom all of said petition after the word "Columbia," on line 32, paragraph 3, on page 2, to and including paragraphs 23, on page 19, of said petition, and also striking from said petition all thereof following paragraph 26, on page 20, and substituting in the place of the latter matter so stricken out as follows:

"27. That said board of audit did of their own motion, upon an examination of the claims of said Evans, make two awards to said Evans of the sums of $909.40 and $19,616.25, respectively, for which they issued their certificates numbered 8879 and 19429, dated August 1, 1874; that said certificates were thereupon duly assigned by said Evans to said Thomas J. Fisher, and that the claimant is the lawful owner and holder of said certificates, and payment of the same has been demanded, but the same has been refused and said certificates remain wholly unpaid.

"Wherefore the claimants pray judgment for the amount of said certificates as a debt due on the 1st day of August, 1874."

B. E. VALENTINE,
Attorney for Claimants.

The defendant consents to said amendments.

JOHN B. COTTON,
Assistant Attorney-General.

Filed June 12, 1890.

(Endorsed:) Allowed. W. A. R., Ch. J.

XIX. Thereupon and after the lapse of 90 days the said Treasurer of the United States, in pursuance of the authority conferred upon him by the act of Congress approved March 3, 1881, as follows:

"That the Treasurer of the United States, as ex officio sinking fund commissioner, is hereby authorized, whenever in his opinion it will be more advantageous for the interest of the District of Columbia to do so, to sell the bonds authorized to be issued under the provisions of the sixth section of the act of the Congress of the United States, entitled 'An act,' etc., approved June 16, 1880, for the satisfaction of the judgments which may be rendered by said Court of Claims under the provisions of the said act, and pay the said judgments from the proceeds of said sales, instead of delivering to said judgment claimants the said bonds as provided for in said act." (21 Stat., p. 466.)

paid in cash the amount of said certificates, with interest at the rate of 3.65 per cent only.

7 XX. The said executors of Thomas J. Fisher, prior to the payment of said amount, in pursuance to the order of the supreme court of the District of Columbia, sitting for the transaction of orphans' court business, made on the 15th day of September, 1890, assigned and transferred to one Marcus W. Robinson all claims against the District of Columbia growing out of the contracts of said Evans with the District of Columbia, which had been assigned by said Evans to their testator, Thomas J. Fisher, as your petitioner is informed and believes, and thereafter said Marcus W. Robinson duly assigned the same and all of the same to your petitioner. Copies of said assignments are hereinafter annexed, marked "Exhibits Assignments 1 and 2."

XXI. Thereafter, and on the 13th day of August, 1894, an act of Congress was duly passed providing as follows:

"That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June sixteenth, eighteen hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rates of interest due upon said certificates from their date up to the date of approval of said act providing for their redemption." (28 Stat., 271.)

XXII. Thereafter your petitioner presented her claim for such residue of interest upon the amounts of said board of audit's certificates No. 19429 and No. 8879 to the above-named Treasurer of the United States and requested payment thereof, and laid before said Treasurer all the facts and material allegations hereinbefore set forth, but the said Treasurer refused and still refuses to make payment, on the ground that the

said board of audit certificates had not been "redeemed" by him or his predecessor in office, but that the action taken upon the same was the payment of a judgment recovered upon them. A copy of the refusal of said Treasurer is hereto annexed, marked "Exhibit Treasurer's refusal."

XXIII. Your petitioner respectfully represents that both she and her assignors have done every act incumbent upon them or possible for them to do to entitle themselves to the benefit of the aforesaid acts of Congress providing for the redemption of said board of audit certificates and for the payment of the residue of unpaid legal interest thereon, as she is informed and believes, and that she should not be prejudiced by the wrongful or mistaken acts of the officers of the District of Columbia or of the United States, but that your petitioner is entitled to the full benefits of the aforesaid act of Congress of August 13th, 1894.

Wherefore your petitioner prays that by a writ of mandamus, to be issued out of this court, addressed to the said Ellis H. Roberts, Treasurer of the United States, the said Ellis H. Roberts be directed, as such Treasurer, to pay to your petitioner, as an assignee of the aforesaid board of audit certificates and all claims against the District of Columbia arising thereunder, the said residue of 2.35 per centum per annum of unpaid legal rates of interest due upon said certificates from
8 their date up to the date of their redemption, and do and perform such other acts in connection therewith as this honorable court may adjudge your petitioner to be entitled, and as a preliminary to the issue of said mandamus a rule be now granted for said Treasurer to show cause why such writ of mandamus should not issue as aforesaid, and that your petitioner may have judgment against said respondent for her costs in this behalf laid out and expended.

MARIE ANTOINETTE VALENTINE, *Relator.*

CITY OF NEW YORK, *County Queens, ss:*

I, Marie Antoinette Valentine, relator above named, do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts thereof stated upon my personal knowledge are true, and that those said on information and belief I believe to be true.

MARIE ANTOINETTE VALENTINE.

Subscribed and sworn to before me this 22d day of November, 1897.

[SEAL.] WILLIAM QUAYLE,
Notary Public, Kings Co.

EXHIBIT A.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 9, 1890.

In the Court of Claims.

THOMAS J. FISHER
v.
DISTRICT OF COLUMBIA.

To the honorable Commissioners of the District of Columbia.

GENTLEMEN: The above action having been settled in accordance with the terms of your communication of June 9, 1890, you will please

deliver to Mr. B. F. Valentine the two certificates now in your custody, to wit:

Auditor's certificate No. 8879, dated August 1, 1874, for $909.40;
Auditor's certificate No. 19429, August 1, 1874, for $19,616.25.

Very respectfully,

JOHN B. COTTON,
Assistant Attorney-General.

EXHIBIT.—ASSIGNMENTS 1 AND 2.

Know all men by these presents, that we, Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, as executors of the last will and testament of Thomas J. Fisher, deceased, late of the District of Columbia, in consideration of the request of Lillian Evans and Charles E. Evans, and in pursuance of an order of the supreme court of the District of Columbia, sitting at a special term for the
9 transaction of probate business on the 15th day of September, 1890, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over, unto Marcus W. Robinson all the right, title, and interest which said Thomas J. Fisher had and all which we, as his executors, now have or may at any time be entitled to, in and to, all claims against the District of Columbia, arising out of the contracts made by said District of Columbia or the Commissioners or board of public works thereof, with Charles E. Evans, or the Evans Concrete Pavement Company, and now or heretofore the subject of action against the District of Columbia in the name of, or for the use of, said Thomas J. Fisher, as assignee of said Charles Evans: to have and to hold the same unto the said Marcus W. Robinson, his executors, administrators, and assigns to his and their use; hereby constituting him and them our attorney and attorneys irrevocable, to collect and receive the same in our names or otherwise, but at his own costs and expenses, saving us harmless from all charges and liabilities of any kind in respect thereto.

And we hereby agree to execute any further instruments or conveyances necessary or proper for the further effectuating of the said assignment and transfer of any legal interest in said claims or their proceeds.

EDWARD J. STELLWAGEN,
THOMAS M. GALE,
GEORGE E. HAMILTON,
Executors of the Late Will and Testament of Thomas J. Fisher.

DISTRICT OF COLUMBIA, *ss:*

On this day of September, 1890, before me personally came Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, to me known and known to be the persons mentioned in and who executed the foregoing instrument, and they thereupon acknowledged to me, jointly and severally, that they executed the same as the executors of the will of Thomas J. Fisher, deceased.

[NOTARIAL SEAL.]

JOHN J. MALONE,
Notary Public, D. C.

Know all men by these presents, that I, Marcus W. Robinson, of Brooklyn, New York, for good and valuable considerations to me paid by Marie A. Valentine, of the city of Brooklyn, the receipt of which is acknowledged, have assigned, transferred, and set over unto said Marie A. Valentine all the claims, demands, and interests of every nature, whether in action or otherwise, arising out of the contracts made by the District of Columbia with Charles E. Evans or the Evans Concrete Co., and heretofore the subject of action against the District of Columbia in the name of or for the use of one Thomas J. Fisher, being all the claims assigned to me by the executors of said Thomas J. Fisher, September 15, 1890, to have and to hold the same to the said Marie A. Valentine, her executors, administrators, and assigns forever.

Witness my hand and seal this 1st day of January, 1892.

MARCUS W. ROBINSON.

STATE OF NEW YORK, *County of Kings, ss:*

On this 1st day of January, 1892, before me personally appeared Marcus W. Robinson, to me personally known and known to be the person mentioned in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

BENJAMIN E. VALENTINE,
Notary Public, Kings Co., N. Y.

EXHIBIT.—TREASURER'S REFUSAL.

TREASURY DEPARTMENT,
OFFICE OF THE TREASURER,
Washington, D. C., November 3, 1897.

B. E. VALENTINE, *26 Court street, Brooklyn, N. Y.*

SIR: Your letter of the 27th ultimo enclosing a petition for the payment of interest on certain board of audit certificates under the act of Congress approved August 13, 1894, is received.

You will note that the act referred to provides for additional interest to be paid only upon board of audit certificates redeemed by the Treasurer under the act of June 16, 1880. Neither of the certificates recited in your petition was redeemed by the Treasurer, and they are not in his possession.

You state that certain judgments of the Court of Claims were issued in lieu of these certificates. These judgments were paid by this office in the manner prescribed by law, but neither of them states that they were issued in lieu of or upon debts of the District of Columbia represented by board of audit certificates.

The Treasurer has therefore no authority to pay the additional interest you demand.

Respectfully, yours,

ELLIS H. ROBERTS,
Treasurer U. S., ex officio Comr. Sinking Fund D. C.

Filed December 17, 1897. J. R. Young, clerk.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine
vs.
ELLIS H. ROBERTS, AS TREASURER OF THE United States.
At law. No. 41621.

Comes now the defendant and for cause why the writ of mandamus should not issue as in and by the petition in the above-entitled cause prayed shows that the certain board of audit certificates, so called, in the said petition mentioned, namely, the certificates
11 numbered 8879 and 19429, were not redeemed by him or any person holding the office of Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims either of the said judgments was based.

HENRY E. DAVIS,
United States Attorney, District of Columbia,
Attorney for the Defendant.

H. W. B.
E. H. R.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
December 15, 1897.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of original papers on file in the office of the Treasurer of the United States, ex officio commissioner of the sinking fund of the District of Columbia, in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.]

L. J. GAGE,
Secretary of the Treasury.

S. J.
S. M. G.

In the Court of Claims, term 1889–1890.

DAVID M. DAVIS
vs.
THE DISTRICT OF COLUMBIA.
No. 246, D. C.

I certify that no appeal to the Supreme Court of the United States has been taken by either party from the judgment rendered by the Court of Claims in favor of the said David M. Davis, claimant, on the 12th day of June, A. D. 1890.

Test this 11th day of September, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

Geo. A. King, att'y.

In the Court of Claims.

DAVID M. DAVIS
vs.
THE DISTRICT OF COLUMBIA. } 246.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

12 The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said David M. Davis, claimant, do have and recover in the manner provided by the act of June 16, 1880, chapter 243, in the sum of nine hundred dollars ($900) upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 12th day of June, A. D. 1890.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

Attest:

WILLIAM A. RICHARDSON,
Chief Justice.

Geo. A. King, att'y of record.

[Endorsed.]

WASHINGTON, D. C., *September 12, 1890.*

Received from the Treasurer U. S. his check, No. 84233, payable to the order of David M. Davis, for fourteen hundred twenty-nine $\frac{29}{100}$ dollars ($1,429.29), in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims in cause No. 246, David M. Davis vs. The District of Columbia.

Principal of judgment, cause No. 246.....	$900
Interest from Aug. 1, 1874, to Sept. 11, 1890, at 3.65 %....	529. 29
	$1, 429. 29

GEORGE A. KING,
Attorney of Record.

In the Court of Claims, term 1889–1890.

EDWARD J. STELLWAGEN, THOMAS M. GALE, AND George E. Hamilton, executors of Thomas J. Fisher, deceased, assignee of Charles E. Evans,
vs.
THE DISTRICT OF COLUMBIA. } No. 246, D. C.

I certify that no appeal to the Supreme Court of the United States has been taken by either party from the judgment rendered by the Court of Claims in favor of the said Edward J. Stellwagen, Thomas M. Gale, and

George E. Hamilton, executors of Thomas J. Fisher, deceased, assignee of Charles E. Evans, claimants, on the 12th day of June, A. D. 1890.

Test this 11th day of September, A. D. 1890.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

B. E. Valentine, esq., att'y of record.

13 In the Court of Claims.

EDWARD J. STELLWAGEN, THOMAS M. GALE, AND George E. Hamilton, executors of Thomas J. Fisher, deceased, assignee of Charles E. Evans, } 246.
vs.
THE DISTRICT OF COLUMBIA.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, assignee of Charles E. Evans, do have and recover, in the manner provided by the act of June 16, 1880, chapter 243, the sum of nineteen thousand six hundred and twenty-five $\frac{65}{100}$ dollars upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 12th day of June, A. D. 1890.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Attest:
WILLIAM A. RICHARDSON,
Chief Justice.

B. E. Valentine, att'y of record.

[Endorsed.]

WASHINGTON, D. C., *September 12, 1890.*

Received from the Treasurer U. S. two checks, as follows: No. 84235, for eighteen thousand six hundred sixty-seven $\frac{49}{100}$ dollars ($18,667.49), and No. 84236, for twelve thousand five hundred x/00 dollars ($12,500.x), both payable to the order of Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, deceased, assignees of Charles E. Evans, in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims in cause No. 246, Edward J. Stellwagen et al. vs. The District of Columbia.

Principal of judgment, cause No. 246	$19,625. 65
Interest from Aug. 1, 1874, to Sept. 11, 1890, at 3.65%	11,541. 84
	$31,167. 49

B. E. VALENTINE,
Att'y of Record.

14 WASHINGTON, D. C., *September , 1890.*

Received from the Treasurer U. S. his check, No. , payable to the order of Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, deceased, assignees of Charles E. Evans, for thirty-one thousand one hundred sixty-seven $\frac{49}{100}$ dollars (31,167.49).

Demurrer.—Filed December 18, 1897.

In the supreme court of the District of Columbia.

THE UNITED STATES EX REL. MARIE A. VALENTINE, *vs.* ELLIS H. ROBERTS, TREASURER OF THE UNITED States. } No. 41621. At law.

Now comes the relator and saith as to the answer of the defendant, Ellis H. Roberts, by him pleaded, that the same and the matters therein contained, in manner and form as are pleaded and set forth, are not sufficient in law to bar or preclude her, the said relator, from having or maintaining her aforesaid writ of mandamus against him, the said defendant, and that she, the said relator, is not bound to answer or reply to the same.

And this the relator is ready to verify.

Wherefore the relator, for want of a sufficient plea in this behalf, prays judgment.

B. E. VALENTINE,
Attorney for Petitioner.

Dated Dec. 18, 1897.

Judgment ordering mandamus.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine, petitioner, *vs.* ELLIS H. ROBERTS, AS TREASURER OF THE United States, respondent. } At law. No. 41621.

This cause coming on to be heard upon the petition for a writ of mandamus, rule to show cause, and the return thereto, and the demurrer to the return, and, after hearing arguments of the respective attorneys, it is considered and ordered that a writ of mandamus issue to Ellis H. Roberts, Treasurer of the United States, respondent therein, commanding him to pay to the relator herein, pursuant to the act of Congress approved August 13, 1894, the interest on the board of audit certificates numbered 19429, for $19,616.25, and 8879, for $909.40, at the

15 rate of 2.35 per centum per annum from the date of said certificates, to wit, August 1st, 1874, up to the date of the approval of the act of Congress providing for their redemption, to wit, June 16, 1880, together with the costs of this case.

March 21st, 1898.

CHAS. C. COLE,
Asso. Justice.

Appeal noted by respondent to court of appeals in open court.

Note of appeal.—Filed March 21, 1898.

In the supreme court of the District of Columbia.

UNITED STATES EX REL. VALENTINE *vs.* ELLIS H. ROBERTS.	At law.	No. 41621.

The clerk of said court will note an appeal to the court of appeals on behalf of the defendant from the judgment entered in the above-entitled cause and will issue citation thereon.

HENRY E. DAVIS,
Attorney for Defendant.

In the supreme court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine *vs.* ELLIS H. ROBERTS, TREASURER OF THE United States.	At law.	No. 41621.

The President of the United States to The United States of America ex rel. Marie A. Valentine, greeting:

You are hereby cited and admonished to be and appear at a court of appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office, supreme court of the District of Columbia, on the 21st day of March, 1898, wherein Ellis H. Roberts, Treasurer of the United States, is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 21st day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal supreme court of the District of Columbia.] JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this day of , 189 .

Attorney for Appellee.

16 [Endorsed:] No. 41621. Law. United States ex rel. Marie A. Valentine vs. Ellis H. Roberts, Treasurer U. S. Citation. Issued Mar. 21st, 1898. Served cop of the within citation on within-named appellee. Not to be found. April 14, 1898. Aulick Palmer, marshal. C. Henry E. Davis, attorney for appellant.

Memorandum.

April 4, 1898.—Appeal bond filed.

Supreme court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 29, inclusive, are true copies of originals in cause No. 41621, at law, wherein The United States of America ex rel. Marie A. Valentine is plaintiff and Ellis H. Roberts, Treasurer of the United States, is defendant, as the same remains upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, the 14th day of April, A. D. 1898.

[Seal supreme court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

(Endorsed on cover:) District of Columbia supreme court. No. 792. Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States of America ex rel. Marie A. Valentine. Court of appeals, District of Columbia. Filed Apr. 15, 1898. Robert Willett, clerk.

17 TUESDAY, *May 3d, A. D. 1898.*

ELLIS H. ROBERTS, TREASURER OF THE UNITED States, appellant,
vs.
THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine. } No. 792.

The argument in the above-entitled cause was commenced by Mr. D. W. Baker, attorney for the appellant, and was continued by Mr. Benj. E. Valentine, attorney for the appellee, and was concluded by Mr. D. W. Baker, attorney for the appellant.

18 ELLIS H. ROBERTS, TREASURER OF THE United States, appellant,
vs.
THE UNITED STATES OF AMERICA EX REL. Marie A. Valentine. } No. 792.

(Mr. Justice Shepard delivered the opinion of the court:)

This is an appeal from a judgment ordering a writ of mandamus to issue to the appellant, Ellis H. Roberts, as Treasurer of the United States and ex officio commissioner of the sinking fund of the District of Columbia.

The facts, about which there is no controversy, are substantially these:

Charles E. Evans was a contractor for paving, &c., in the District of Columbia and had an unsettled claim therefor at the time of the passage

of the act of Congress providing for the ascertainment of the indebtedness of said District, through a board of audit, June 20, 1874.

This board was authorized to issue certificates for amounts found to be due, and these were to be redeemed with bonds of the District provided for therein, bearing interest at the rate of 3.65 per cent.

On August 1, 1874, two certificates were issued on behalf of Evan's claims; one for $19,616.25 and one for $909.40.

These certificates were withheld from Evans and deposited with the Treasurer, as sinking fund commissioner, who held them subject to the order of the District Commissioners, because the latter had in the meantime made a claim against Evans for repairs necessary on the work that had been done by him. The controversy remained unsettled until March 13, 1876, when Congress abolished the board of audit and prohibited the further issue of the 3.65 bonds. On June 16, 1880, another act was passed authorizing the redemption of outstanding certificates of the board of audit by the issue of said bonds, and authorizing suits in the
19 Court of Claims upon certain contested claims. Judgments that might be rendered in the Court of Claims were to be discharged in the same manner. As the 3.65 bonds began to sell at a premium Congress, by act of March 3, 1881, authorized the Treasurer to sell the bonds and pay the certificates and judgments from the proceeds, when it should be for the interest of the District. The act of July 4, 1884, provided that no certificate should be paid unless presented for payment within one year from the date of the act.

Prior to January, 1881, the two certificates were assigned by Evans to Thomas J. Fisher. Demand was made upon the Treasurer for their redemption under the act of 1880 and was refused. Said Fisher then instituted suit against the District in the Court of Claims, as authorized by the said act, upon both certificates and sundry other claims and demands. Fisher dying, the suit was regularly prosecuted in the name of his executors.

A compromise seems to have been made with the District Commissioners, and, upon the advice of the Department of Justice, the certificates were on June 9, 1890, delivered to the attorney for the executors.

They were at once presented to the Treasurer, with request to redeem them in 3.65 bonds.

He refused payment either in bonds or money, unless a judgment should be had in the Court of Claims in the said suit for his protection. Thereupon, in order to obtain said judgment, the plaintiff amended his pleadings, striking therefrom all demands save said two certificates, and the court entered judgment thereon June 12, 1890. The Treasurer then paid the judgments in money, with interest at 3.65 per annum. About this time the executors of Fisher assigned to one Marcus W. Robinson all claims of every nature which they had under the assignment of Evans to Fisher, and Robinson in turn assigned to the petitioner, Marie A. Valentine.

On the 13th day of August, 1894, an act of Congress was duly passed providing as follows:

20 "That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June sixteenth, eighteen

hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rates of interest due upon said certificates from their date up to the date of approval of said act providing for their redemption." (28 Stat., 271.)

The said Marie A. Valentine, as assignee of the said certificates, made demand of the Treasurer for the payment of the additional interest in said act provided. This was refused in a written communication, dated November 3, 1897, giving the following reasons:

"You will note that the act referred to provides for additional interest to be paid only upon board of audit certificates redeemed by the Treasurer under the act of June 16, 1880. Neither of the certificates recited in your petition was redeemed by the Treasurer, and they are not in his possession.

"You state that certain judgments of the Court of Claims were issued in lieu of these certificates. These judgments were paid by this office in the manner prescribed by law, but neither of them states that they were issued in lieu of or upon debts of the District of Columbia represented by board of audit certificates.

"The Treasurer has therefore no authority to pay the additional interest you demand."

Petition for mandamus was then filed, setting out substantially the facts above stated.

The defendant made the following return to the rule to show cause:

"Comes now the defendant, and for cause why the writ of mandamus should not issue as in and by the petition in the above-entitled cause prayed shows that the certain board of audit certificates (so called in the said petition mentioned, namely, the certificates) numbered 8879 and 19429 were not redeemed by him or any person holding the office
21 of Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States hereto annexed and made part hereof, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims either of the said judgments was based."

The return was held insufficient and no leave having been asked to amend, judgment was entered granting the writ of mandamus as prayed.

1. It is clear that if the relator has any right at all under the act of Aug. 13, 1894, she has pursued the only remedy open to her, and the question to be determined is whether, under the facts stated, that remedy is available.

The first assignment of error, to the effect that the court erred in holding that the relator is an assignee of the certificates, can not be sustained.

Treating the demurrer to the return as reaching back to and raising the question of the sufficiency of the allegations of the petition, we find nothing wanting therein in respect of relator's right as assignee of Evans through a successive chain of formal transfers. It is true that the assignment to relator bears date after the payment of the judgments of

the Court of Claims to the executors of Thomas J. Fisher, to whom Evans had assigned the certificates some time after the passage of the redemption act of June 16, 1880, but this seems to us wholly immaterial. We find nothing in the language of the act of August 13, 1894, to justify the contention of the appellant that the assignees therein "mean assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards." On the other hand, it seems, without doubt, to extend its relief to all owners, holders,
22 or assignees of the certificates that had been redeemed under the act of June 16, 1880, without limitation in respect of the time of the accrual of their respective rights and interests.

Being responsible in case of payment to an unauthorized claimant, the defendant had the right to demand satisfactory proof of the genuineness and regularity of the several assignments under which the relator claimed, and had his denial of payment been founded on the insufficiency thereof, after due enquiry, the writ of mandamus would not lie. Had that objection been set up, the relator might have satisfied it by supplementary proofs or else by proceedings at law for the establishment of her claim as against Evans and intermediate assignees; but it was not raised, either directly or by implication, in the written statement of the grounds upon which the payment was refused.

Nor does the return of the defendant, made to the rule to show cause, deny the genuineness or regularity of the relator's claim as assignee; hence it must be regarded as admitted.

2. The second contention, namely, "that the certificates set out in the petition were never redeemed by the Treasurer of the United States and therefore are not certificates within the meaning of the act" (August 13, 1894), is far-fetched and equally untenable with the first one.

The act is general and remedial, and its language affords no ground for saying that the certificates therein referred to as "redeemed" by the Treasurer mean such only as had been redeemed in 3.65 bonds under the provisions of the act of June 16, 1880.

We think it apparent that the word "redeemed," as applied to said certificates, includes in its meaning not only their redemption in the 3.65 bonds at par, as provided in the act of June 16, 1880, but also their payment in cash from the proceeds of such bonds when sold for the purpose by the Treasurer under the supplemental act of March 3, 1881. This act was passed for the benefit of the District, because in the
23 meantime the 3.65 bonds had risen above par in the market. It was, to that extent and for that purpose, amendatory of the former act and must be considered with it.

Any other view would be most unjust as well as unreasonable.

The single purpose of the act of August 13, 1894, was to compensate holders of valid claims, whose payment had been so long delayed, by giving them additional interest to make up the full legal rate of six per cent for the six years between Aug. 16, 1874—when payment had been suspended—and June 16, 1880, when redemption or payment of the principal with 3.65 per cent interest was provided for. Moreover, the equities of those who had been paid in cash were even greater than those of certificate holders who had been paid in the bonds, because these latter had received the additional benefit of the immediate advance in the value of those bonds. Furthermore, those redemption acts remained in force,

limited in their operation only by the act of July 5, 1884, providing that no certificate should be thereafter paid unless presented within one year from this last date.

As a matter of fact, the return made by the defendant in answer to the rule does not set up any such construction of the act of 1894. The sole ground of refusal to pay the demand of relator, as therein stated, is, "that these Evans certificates" were not redeemed by him or any person holding the office of Treasurer of the United States, and that the only moneys paid by any Treasurer or account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States hereto annexed, and that the defendant has no official knowledge, nor has he any official record in his office showing or tending to show upon what claim or claims said judgments were based.

24 The undenied allegations of the petition show that the certificates had at last been surrendered, to wit, June 9, 1890, upon some agreement of compromise with the District, without a judgment. They were immediately presented to the then Treasurer, who refused payment; knowing that the suit was pending upon them in the Court of Claims, he required that they should be reduced to judgments.

When so reduced to judgments and certified to him from the records of that court, he paid the full amounts respectively adjudged, with 3.65 per cent interest. The certificates became merged in the judgments and were presumably filed with and made a part of the record in the Court of Claims. Hence they could not be paid or redeemed as such; but the payment of the judgments was the complete discharge of their obligation. They were thereby paid and as completely "redeemed," in the sense of that word as used in the act of August 13, 1894, as if they had been actually redeemed in bonds under the act of June 16, 1880, without judgment or the necessity of suit.

There is no room for doubt that these judgments were rendered upon the certificates described in the petition, and the defendant does not deny the fact. He simply says that he has no official knowledge and no official record tending to show that such is the fact. The fact is a matter of record in the Court of Claims, and he can readily procure a transcript thereof for his own official files if it be of any real importance. The foregoing being the only defence made in the return, the court did not err in holding it insufficient.

3. The principles which govern the action of the courts in the exercise of jurisdiction over the Executive Departments of the Government have long since been firmly established. Kendall v. Stokes, 12 Pet., 524; Decatur v. Paulding, 14 Pet., 497; U. S. ex rel. Dunlop v. Black, 128 U. S., 40; Noble v. Union River Logging R. Co., 147 U. S., 165; Seymour v. South Carolina, 2 App. D. C., 240, 246; Int. Con. Co. v. Lamont, 2 App. D. C., 532, 546; S. C., 155 U. S., 303, 308; Lochren v. Long, 6 App. D. C., 486, 504.

25 The duty which is sought to be enforced by mandamus must be purely ministerial and existent at the time. The duty of the officer must be plainly defined and one that he is required by the law to perform. In our opinion, these requirements are completely satisfied by

the conditions of this case. The statute conferring the right and imposing the duty is so plain in its terms as to admit of no room for construction.

The situation is quite different from that in Decatur v. Paulding, or in U. S. ex rel. Dunlap v. Black, supra, wherein the duty of construing different laws and determining by which one the rights of the relators were to be governed, was necessarily involved.

Moreover, as we have seen, the defendant did not, in fact, found his refusal to perform upon any such supposed duty of construction of the statute.

4. The further point has been made that the record does not show in whose possession the two certificates were when the suit was filed. Presumably they are on file in the Court of Claims in the records of the suits therein; but at the same time some doubt as to this is raised by certain recitals of the petition. Whilst they are of a nature, especially since their merger in the judgments, that renders their possession of comparative unimportance, yet the defendant, as a public officer, is entitled to as complete protection from all danger of further litigation as can be afforded by the judgment of the court. Consequently, if these certificates were not surrendered in procuring the judgments upon them, it is but just that the judgment in this case should be so amended as to require their surrender to the defendant as a condition precedent to the execution of the writ.

The judgment will be affirmed with costs and the cause will be remanded with leave to amend that judgment, if need be, in accordance with the foregoing suggestion.

It has been suggested that this cause be treated as one to which
26 the United States are parties, because of the official character of the defendant, and that, as a consequence, no costs should be awarded.

It is to be regretted that no action has ever been taken by Congress to meet the exigencies of such cases as this, both in respect of exempting public officers from liability for costs, and providing for the substitution of their successors, as parties, in case of death, resignation, or removal. The courts have no discretion in the premises. In the absence of legislation making another rule, they must treat the action as personal—the writ as directed to the person temporarily occupying the office, and not to the office itself. It is for this reason that the Supreme Court has invariably refused to permit the defendant's successor in office to become a party to the cause in his stead. U. S. ex rel. Bernardin v. Butterworth, 169 U. S., 600. In that case the subject is carefully reconsidered and the doctrine reaffirmed by the majority of the court, after a review of former decisions.

Mr. Justice Shiras, who delivered the opinion of the majority, adopted a part of the opinion in U. S. v. Boutwell (17 Wall., 604), from which we quote the following extracts as governing the question of costs here presented: "It is the personal default of the defendant that warrants impetration of the writ, and if a peremptory mandamus be awarded, the costs must fall upon the defendant. * * * If a successor in office may be substituted, he may be muleted in costs for the default of his predecessor, without any delinquency of his own."

Affirmed.

27 TUESDAY, *May 17th, A. D.* 1898.

ELLIS H. ROBERTS, TREASURER OF the United States, appellant,
vs.
THE UNITED STATES OF AMERICA ex rel. Marie A. Valentine.
} No. 792. April term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed, with costs; and that this cause be, and the same is hereby, remanded to the said supreme court with leave to amend its judgment, if need be, in accordance with the suggestion contained in the opinion of this court.

Per Mr. Justice SHEPARD.

May 17, 1898.

28 Court of appeals of the District of Columbia.

I, Robert Willett, clerk of the court of appeals of the District of Columbia, do hereby certify that the foregoing printed and type written pages, numbered from 1 to 27, inclusive, contain a true copy of the transcript of record and proceedings of the said court of appeals in the case of Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States ex rel. Marie A. Valentine, No. 792, April term, 1898, as the same remains upon the files and records of said court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals at the city of Washington this 25th day of May, A. D. 1898.

[SEAL.] ROBERT WILLET,
Clerk of the Court of Appeals of the District of Columbia.

29 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the District of Columbia, greeting:

Being informed that there is now pending before you a suit in which Ellis H. Roberts, Treasurer of the United States, is appellant, and The United States ex rel. Marie A. Valentine is appellee, which suit was removed into the said court of appeals by virtue of an appeal from the supreme court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said court of appeals and removed into
30 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 18th day of October, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

31 [Indorsed:] Supreme Court of the United States. No. 312, October term, 1898. Ellis H. Roberts, Treasurer of U. S., vs. The U. S. ex rel. Marie A. Valentine. Writ of certiorari.

32 In the Supreme Court of the United States, October term, 1898.

ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner,
vs.
THE UNITED STATES EX REL. MARIE A. Valentine. } No. 312.

Stipulation as to return of writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause, that the certified copy of the transcript of the record therein, now on file in the office of the clerk of the Supreme Court, may be taken as the return of the clerk to the writ of certiorari issued herein, subject, however, to the following amendments, annexed hereto, of proceedings and proofs occurring at the hearing which it is agreed are properly to be inserted in the record, the same having been before the supreme court of the District and also before the court of appeals.

JOHN K. RICHARDS,
Solicitor-General.

B. E. VALENTINE,
Counsel for Respondent.

It is stipulated that the following matter be inserted in the transcript of record, certified in the Supreme Court of the United States on an appeal herein, between pages 25 and 26, as shown by side folios of the printed record, to wit:

"At the hearing had before the supreme court of the District of Columbia the Treasurer of the United States was notified to produce and did produce from the records of his office the following letter written by B. E. Valentine, claimant's attorney, June 13, 1890, to the Secretary of the Treasury, and the indorsements thereon by the Assistant
33 Secretary of the Treasury, acting president of the Board of Commissioners of the District of Columbia, and the Secretary of the Treasury, and that said documents were read in evidence and ordered to be made part of the record by the court, as follows, to wit:

Letter of B. E. Valentine, claimant's attorney, to Secretary of the Treasury, June 13, 1890.

"SIR: We present herewith duly certified and authenticated copies of judgments of the Court of Claims, rendered June 12, 1890, against the

District of Columbia for $900, $15,000, $10,000, and $19,525$\frac{65}{100}$, respectively, in cases Nos. 234, 235, & 246, and we request the payment thereof in 3.65 bonds, as provided in sec. 6 of act of June 16th, 1880, chap. 243.

"These judgments were all rendered by consent of the defendant in pursuance of a compromise and settlement of litigation agreed upon between the claimants and the District Commissioners.

"This settlement, by which claimants receive but a small portion of their claims and the District of Columbia, according to the report of its own auditor, effects a saving of about $45,000, was concluded upon the express understanding on the part of the claimant that the amounts of the judgments should be paid in 3.65 bonds, as provided in said sec. 6 of the act of June 16, 1880. And in view of the advantages accruing to the District from such settlement the Commissioners of the District agreed that these judgments should, if possible, be so paid in 3.65 bonds or that the claimants should not be considered as concluded by the settlement.

"We therefore, as attorneys of record for said claimants and intervenor, respectfully request the delivery of said 3.65 bonds to us for the respective amounts shown by said judgments to be due our clients.

"A letter from the Attorney-General has been sent to the
34 Department showing that said judgments were rendered by consent and that there will be no appeal therefrom.

"Respectfully,

"B. E. VALENTINE,
"*Attorney for Claimant.*

"GEO. A. KING,
"*Attorney for Intervenor Davis.*

[Endorsed.]

"TREASURY DEPARTMENT,
"*June 13, 1890.*

"Respectfully referred to the Hon. Commissioners of the District of Columbia for verification.

"GEO. S. BATCHELDER,
"*Assistant Secretary.*

[Further endorsement.]

"It was orally agreed that if the amount stipulated for which judgments might be rendered could not be paid in 3.65 D. C. bonds the agreement of compromise might be cancelled.

"June 13, 1890.

"L. G. HINE,
"*Acting President Board of Commissioners, D. C.*

[Further endorsement.]

"TREASURY DEP'T,
"*June 13, 1890.*

"Respectfully referred to the Hon. Attorney-General for his statement as to whether or not there was an agreement or understanding which

would be binding on the United States that the judgments ren-
35 dered by the Court of Claims in the within-named cases were to be paid by the issue of 3.65 bonds.

"W. WINDOM, *Secretary.*"

J. K. RICHARDS,
Solicitor-General.

B. E. VALENTINE,
Respondent's Counsel.

(Endorsed:) Ellis H. Roberts, Treasurer of the United States, vs. The United States of America ex rel. Marie A. Valentine. Stipulation as to return to writ of certiorari. Court of appeals, District of Columbia. Filed Nov. 11, 1898. Robert Willett, clerk.

36 *Court of appeals of the District of Columbia.—Return to writ of certiorari.*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Ellis H. Roberts, Treasurer of the United States, appellant, vs. The United States of America ex rel. Marie A. Valentine, together with the amendments mentioned in said stipulation and hereto annexed constitute a full, true, and complete transcript of the record upon which said cause was heard in the court of appeals of the District of Columbia, together with all proceedings in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court of appeals at the city of Washington this 12th day of November, A. D. 1898.

[SEAL.] ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

37 (Indorsed:) File No., 16896. Supreme Court U. S., October term, 1898. Term No., 312. E. H. Roberts, Treasurer, &c., petitioner, vs. The U. S. ex rel. Marie A. Valentine. Writ of certiorari and return. Filed Nov. 14, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ELLIS H. ROBERTS, TREASURER OF the United States, appellant and petitioner,
v.
THE UNITED STATES EX REL. MARIE A. Valentine.
No. .

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

ELLIS H. ROBERTS, TREASURER OF the United States, appellant and petitioner,
v.
THE UNITED STATES EX REL. MARIE A. VALENTINE.

No. .

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Comes now the Solicitor-General on behalf of the appellant and petitioner, Ellis H. Roberts, Treasurer of the United States, and respectfully prays for a writ of certiorari to require the above-entitled cause to be certified to this court for review and determination pursuant to the act of March 3, 1897 (29 Stats., 692).

1. A petition for a writ of mandamus was filed in the supreme court of the District of Columbia against Ellis H. Roberts, praying that he be required to pay to the

relator, Marie A. Valentine, pursuant to the act of Congress approved August 13, 1894, the interest on certain board of audit certificates, one, No. 19,249, for $19,616.25 and another, No. 8,879, for $909.40, at the rate of 2.35 per cent per annum from the date of said certificates, to wit, August 1, 1874, up to the date of the approval of the act of Congress providing for the redemption, to wit, June 16, 1880, together with costs of suit; upon which petition judgment was rendered awarding the writ on March 21, 1898. On appeal taken to the court of appeals of the District of Columbia that court, on May 17 instant, affirmed the decision of the court below. At the same time, however, it ordered that the judgment below be corrected in that the certain certificates should be surrendered before the payment of the interest, and the judgment should make the surrender of them a condition precedent to the payment of interest.

2. The petition for the writ of mandamus recites that one Charles E. Evans (an assignor of your petitioner), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets and making other improvements on streets and avenues in the city of Washington, and that he carried on said business under the name of "Evans Concrete Company;" that the work done and materials furnished by said Evans was under contracts with the duly authorized officials of the District of Columbia, being with the board of public works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the 1st day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874; that said accounts were approved by the board of audit, and after having duly audited the said claims, they were signed and issued for delivery, the two certificates mentioned aforesaid, said certificates being set out in the record, on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the board of public works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were not well founded; but the said board of audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880,

the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demaud to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the board of audit mentioned aforesaid; that during the December term, 1889–90, of said court the executors of the said Thomas J. Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commission-

ers of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the said attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended for that purpose, and that the judgments after ninety days were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson all of the several claims, and that the said

Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said board of audit certificates and requested payment thereof and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said board of audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set on page 10 of the record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the board of audit certificates, so-called, mentioned in said petition *were not redeemed by him or any person holding the office of the Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them, were paid *upon such judgments of the Court of Claims of the United States as appears by the transcript from the records of the Treasury Department of the said United States, hereto annexed and made part hereof, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based.* Then, as part of said return, are set out the

judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that *both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.*

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the record.

3. Afterwards, as has been stated, this cause was appealed to the Court of Appeals of the District of Columbia, by which court the judgment of the court below, with the modification mentioned aforesaid, was affirmed. By reason of the affirmance of said judgment as modified the Treasurer of the United States will be compelled to pay money out of the Treasury of the United States under the act of August 13, 1894, although the record filed herewith shows on its face that the relator has no interest in the board of audit certificates and was not the assignor of said board of audit certificates, and that said certificates were never redeemed by the Treasurer of the United States; although, further, the record shows on its face that the answer of said Treasurer is a complete and sufficient answer to the petition for the writ of mandamus and presents a substantial fact which the record shows

has never been tried, and although the record shows that the relator presented no cause that could be corrected by a writ of mandamus. It is therefore insisted that the Supreme Court of the District of Columbia and the Court of Appeals committed error when they decided that the writ of mandamus should issue against said Roberts.

4. The record fails to show that the relator has any interest in the certificates, according to the facts set out in the petition, or that she was ever the owner of the certificates, that she is the holder of them, or who at the present time holds them. If the relator has any right at all, she must claim it as assignee of some former holder of these certificates. The petition shows that in 1890 the certificates were delivered to Fisher, but it fails to show whether they were ever in the possession of his executors, or where they are at the present time; but it does show that Fisher was the assignor of them at the time the judgments were paid, and that at that time there was no assignment on the part of Fisher's executors to any person.

The Government contends that the act of August 13, 1894, in using the word "assignees," means the assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards; and the record in this case shows that Robinson, the party from whom the relator claims, never was the assignee of these certificates, for according to the petition the judgments were paid by the Treasurer of the United

States on September 12, 1890, which said judgments, according to petitioner's own contention, fully settled the claims, and the assignment made by the executors of Fisher was made some time after September 15, 1890, as the assignment itself recites "that the same is made in pursuance of an order of the supreme court of the District of Columbia sitting at a special term for the transaction of probate business on the 15th day of September, 1890."

It is further contended on behalf of the United States, that the certificates set out in the petition were never redeemed by the Treasury of the United States, and therefore are not certificates within the meaning of the act. The act applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates were never redeemed and are not now in the possession of the Treasurer of the United States, and the answer of the respondent denies that they were ever redeemed by him or any person whomsoever. The statements made in the petition and answer show that the certificates were never redeemed; but the contention on the part of the relator is that "redeemed" in the act means merely payment, and they, being paid, are to be considered as redeemed. Attention is called, however, to the fact that the acts of Congress on the subject of these certificates first provide for redemption and then for payment, but when the judgments set out as a part of respondent's answer were paid, the Treasurer of the United States was prohibited from paying these certifi-

cates by act of Congress of July 5, 1884 (23 Stats., 131), said act reading as follows:

> That no payment shall be made of any certificate issued by the late board of audit of the District of Columbia under authority of the act approved June twentieth, eighteen hundred and seventy-four, that shall not be presented for payment within one year from the date of the approval of this act.

There is no allegation in the petition that these certificates were presented within one year after the passage of the act, and as both petition and answer show that the certificates were not paid, and never have been paid, by the Treasurer of the United States, it is insisted that this is a conclusive answer to the contention that said certificates have been redeemed.

There is, furthermore, nothing in the record to show who has possession of these certificates at the present time, so that if the same should be found in the hands of a third person, or if third persons should claim them, he would be driven to contest their right as well as the right of the relator in the petition for the writ of mandamus.

It is contended that the Court of Appeals of the District of Columbia, when in its opinion it orders that the judgment of the bourt below be corrected, admits itself that the record in this cause is insufficient upon which to issue a writ of mandamus, because the court itself attempts to settle the disputed point which the Treasurer of the United States had a right to settle—that is, the ownership of the said certificates.

Such being the state of the record, the Supreme Court of the District of Columbia was asked to issue the writ

of mandamus against the Treasurer of the United States to compel him to decide all of the points herein mentioned in favor of the petitioner, and then to compel the payment to the petitioner of a certain sum of money as interest due under the act of August 13, 1894 (28 Stats., 277), which said act reads as follows:

> That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him, under the act approved June sixteenth, eighteen hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal rate interest due upon said certificates from their date up to the day of approval of said act providing for their redemption.

The contention of the Government is that the above act called upon the Treasurer of the United States to determine who was entitled thereunder to receive payment of interest, and in order to decide this point in the present case the Treasurer of the United States had to determine the effect of the several assignments to the petitioner, what interest, if any, passed under the assignments, and whether or not the word "assignee" means assignee at the time of the redemption or an assignee made after the certificates were redeemed; also, if he decides that "assignee" means the assignee at the time the interest is demanded of him, he is also to inquire if there is a present holder, and what rights, if any, the holder has against the assignee in this case, and he is further to determine if any interest passed to Robinson in these certificates, the judgment of the Court of Claims having been fully satisfied and paid before the assignment, and

there appearing nothing of record to show that these certificates were ever delivered to Robinson.

The Treasurer must also decide that "redeemed," as used in the act, means more than an actual redemption, and he must say that payment of the judgments in the Court of Claims, although there is nothing on their face to show that there is a payment of the certificates, was a payment and redemption of the certificates within the meaning of the act. It is insisted that the court, in deciding this cause, went further and held that there was no discretion in the Treasurer of the United States in deciding these questions, and that he must decide them all in favor of the relator; that he would be compelled to decide that the payment of the judgment was a payment in redemption of the certificates, when he, by the act of July 5, 1884, was prohibited from paying any such certificates.

It is contended on behalf of the Government that when the relator herself asked the Treasurer in this case to decide all of the questions in her favor, and to decide them even contrary to law, she has no standing in court by the writ of mandamus to compel the Treasurer to perform these acts, because these acts are not merely ministerial but call upon him to perform a discretionary and judicial act, and that therefore the writ of mandamus will not lie.

In support of this contention your petitioner refers to pages 12, 13, 14, 15, 16, 17 of the brief filed by your petitioner in the Court of Appeals of the District of Columbia in said case, the same being entitled "No. 792,"

and copies of which are filed with this petition and made part hereof.

This is one of the few cases where a court has by writ of mandamus ordered money to be paid out of the Treasury of the United States. It is contended that to construe the act of August 13, 1894, to apply to all settlements of board of audit certificates whenever the same may have been settled, or where judgments have been rendered against the District of Columbia for work performed by contractors under bond, would result in the payment of large sums of money not included within the meaning of that act, and lead to extensive litigation. It would also result in establishing the proceeding by mandamus as a convenient means of obtaining the payment of claims against the United States.

It is therefore repectfully submitted that the importance of the questions here presented is sufficient to justify this court in issuing its writ of certiorari.

Notice of this application has been given to opposing counsel.

JOHN K. RICHARDS,
Solicitor-General.

IN THE

Court of Appeals, District of Columbia

APRIL TERM, 1898.

No. 792.

SPECIAL CALENDAR, No. 5.

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA EX REL. MARIE A. VALENTINE, APPELLEE.

This is an appeal from a judgment of the supreme court of the District of Columbia sustaining a demurrer of the appellee to the answer of the appellant to a petition for the writ of mandamus, and granting the relief prayed for in the petition of the appellee, and ordering the writ of mandamus to issue to the appellant, Ellis H. Roberts, Treasurer of the United States, commanding him to pay to the relator, Marie A. Valentine, pursuant to the act of Congress approved August 13, 1894, the interest on the Board of Audit

certificates numbered 19249, for $19,616.25, and 8879, for $909.40, at the rate of 2.35 per centum per annum, from the date of the said certificates, to wit, August 1, 1874, up to the date of the approval of the act of Congress providing for their redemption, to wit, June 16, 1880, together with the costs of this case.

The petition for the writ of mandamus was filed by the relator, Marie A. Valentine, and therein she alleges that one Charles E. Evans (an assignor of your petitioner), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and on streets and making other improvements on streets and avenues, in the city of Washington, and that he carried on said business under the name of "Evans Concrete Company;" that the work done and materials furnished by said Evans was under contracts with the duly authorized officials of the District of Columbia, being with the Board of Public Works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the first day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia and for other purposes," approved June 20, 1874; that said accounts were approved by the Board of Audit, and after having duly audited the said claims, they were signed and issued for delivery the two certificates mentioned aforesaid, said certificates being set out in the record, on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the Board of Public Works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were

not well founded, but the said Board of Audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and that the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880, the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demand to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the Board of Audit mentioned aforesaid; that during the December term 1889–'90 of said court the executors of the said Thomas J.

Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commissioners of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the said attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended for that purpose, and that the judgments after ninety days were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson

all of the several claims, and that the said Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the Record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said Board of Audit certificates and requested payment thereof and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said Board of Audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set out on page 10 of the Record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the Board of Audit certificates, so called, mentioned in said petition *were not redeemed by him or any person holding the office of the Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them, were paid *upon such judgments of the Court of Claims of the United States as appears by the transcript from the records of the Treasury Department of the said United States, hereto annexed and made part hereof, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based.* Then, as part of said return, are set out the judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that *both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.*

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the said record. From this the defendant Roberts in open court noted an appeal to the Court of Appeals.

ASSIGNMENT OF ERRORS.

1. The court erred in sustaining the demurrer.

2. The court erred in not dismissing the petition of the relator, as the same shows on its face that the relator is not entitled to the relief prayed for.

3. The court erred in holding that the relator was an assignor of the said Board of Audit certificates mentioned in the petition.

4. The court erred in holding that said certificates were redeemed by the Treasurer of the United States.

5. The court erred in not holding the return a sufficient answer to the matters set up in the petition.

6. The court erred in holding that the case presented by the petition could be corrected by a mandamus.

ARGUMENT.

Before taking up the case on its merits, it becomes our duty to consider exactly how the issues in this case were heard and determined in the court below.

In the first place, the court considered the facts in the case as admitted by the demurrer, and considered merely whether the records showed that the relator was entitled to the relief prayed for, without even noticing the issue of fact raised by the answer.

This on the part of the court was error, as the only facts the demurrer admitted were the facts set out in the answer; which said facts are an absolute denial on the part of the Treasurer of the United States of the facts relied on in the petition, he saying that *neither he nor any person holding the office of Treasurer of the United States at any time had ever redeemed the said certificates, and that he had no official knowledge, nor was there any official record in his office showing or tending to show that the said judgments paid by the Treasurer of the United States were paid on account of the said certificates;* so that on the hearing of the demurrer to the return the court in its decision virtually said that as matter of law the petitioner is entitled to the relief prayed for, notwithstanding the fact that the respondent says in his answer that the said certificates were never redeemed by him; but as the demurrer thus standing in the record goes to the whole of it, so that it can be considered as a demurrer to the petition, we will consider how far the record shows that the relator is entitled to the relief sought, not in any manner thereby waiving our right to say that if this court should find the petition proper, still the court below erred in not overruling the demurrer to the return, as the return shows a traverse of material facts contained in the petition.

First, let us consider what title, if any, the relator has to bring this suit.

The rule as to the interest of a relator is that whenever the remedy by mandamus is resorted to for the purpose of enforcing a private right, the person interested in having the writ enforced must be the relator; the relator is considered the real party, and his right to the relief must clearly appear. And now, what interest has the relator in these certificates? Is she the owner, holder, or assignee of said certificates? According to the facts set out in the petition, she never was the owner of the certificates, nor has she anywhere alleged that she is the holder of them; the record certainly fails to show who is the holder. Now, if the petitioner has any right at all it must be as assignee of some former holder. The petition shows that in 1890 these certificates were delivered to Fisher, but whether they are still in the possession of his executors at the present time the petition does not show; but the petition does show that Fisher was the assignee of them at the time that these judgments were paid, and that at that time there was no assignment on the part of Fisher's executors to any person.

Evidently the act of August 13, 1894, when it uses the words "the assignees" means assignees at the time of the redemption, and not any person who might acquire a general assignment of claims afterwards. Now, the claim of the relator is that she is an assignee of the executors of Fisher by an assignment of Robinson, who was an assignee of Fisher's claims, as set out in the general assignment; but on the record Robinson never was assignee of these certificates, for the certificates, according to the petition, were paid by the Treasurer of the United States by payments of the judgments mentioned aforesaid on the 12th day of September, 1890, and the assignment made by the executors of Fisher was made some time after the 15th day of September, 1890, as the assignment itself recites "that the same is made in pursuance of an order of the supreme court of the District of Colum-

bia, sitting at a special term for the transaction of probate business, on the 15th day of September, 1890," and nowhere in the assignment are these certificates mentioned. That being so, our contention is that the petitioner is not an assignee within the meaning of the act and really has no interest whatsoever in the certificates mentioned aforesaid.

Second. The second contention is that the certificates set out in the petition were never redeemed by the Treasurer of the United States and therefore are not certificates within the meaning of the act. The act itself applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates never were redeemed, *and are not now in the possession of the Treasurer of the United States*, and the answer of the respondent denies that they were ever redeemed by him or by any person whatsoever. The statements made in the petition and answer conclusively show that the certificates were never redeemed, but the petitioner claims that redeem means merely payment, and that they were paid, so that such payment is equivalent to redemption; but the acts of Congress on the subject of these certificates first provided for redemption and then for payment, but when the judgments set out as part of the respondent's answer were paid the Treasurer of the United States was prohibited from paying these certificates by the act of Congress of July 5, 1884 (23d Stats., 131), said act reading as follows:

"That no payment shall be made of any certificates issued by the late Board of Audit of the District of Columbia under authority of the act approved June 28, 1874, that should not be presented for payment within one year from the date of the approval of act."

There is no allegation in the petition that these certificates were presented within one year after the passage of the act. Indeed, if there were such allegation it would be of no value, as both petition and answer show that the certificates

were not paid by the Treasurer of the United States, and that the only money ever recovered by the assignees of said certificates, the executors of Fisher, were received on the judgments of the Court of Claims, which were fully paid and settled on September 12, 1890.

Thus we see that these certificates were never redeemed or paid; but the court below seemed to consider that they should have been redeemed or paid, and that in considering this petition for the writ of mandamus it should so consider them, as redeemed, because in his opinion a mandamus could have been issued against the Treasurer of the United States to compel him to have so redeemed the certificates. The court overlooked the fact that these certificates were never delivered to the persons claiming them until after the passage of the act prohibiting their redemption and payment, but that they were held as collateral security for the expense of repairs which the Commissioners of the District of Columbia held were due by the said Evans, and certainly no mandamus could have been issued to compel the delivery of the certificates under such circumstances, and at this late day the court cannot attempt to rectify what it supposes to have been an apparent oversight on the part of the holders of the certificates.

Who has these certificates at the present time the record does not show, but the record does show that the relator has not them or did not deliver them to the Treasurer when she demanded the interest that she claims, and the record also shows that they are not in the possession of the said Treasurer of the United States; and the record further shows that there is no record of their payment or redemption in this cause, nor, to the knowledge of the Treasurer of the United States, does any record exist; so that we contend that there is nothing in this record to show that these certificates ever were redeemed within the meaning of the act of August 13, 1894.

Third. And, such being the state of the record as above set out, the supreme court of the District of Columbia was asked to issue the writ of mandamus against the Treasurer of the United States to compel him to decide all of the above points in favor of the petitioner, and then to compel the payment to the petitioner of a certain sum of money as interest due under the act of August 13, 1894; so that we come to consider the last question, namely, Can the supreme court of the District of Columbia compel the Treasurer of the United States to decide in favor of the petitioner all of the points in this cause, and to issue a writ of mandamus to him to give petitioner the relief sought?

The contention of the petitioner is that the act on the part of the Treasurer is merely a ministerial act; but we insist that we have only to make such a contention to show its absurdity. Is it a ministerial act for the Treasurer of the United States to decide who is the assignee of these supposed certificates, Fisher's executors or the petitioner? In order to decide this point the Treasurer has to determine the effect of the several assignments to the petitioner and what interest, if any, passed under the assignments, and whether or not the word "assignee" in the act means assignee at the time of redemption or an assignee made after the certificates were redeemed; and, further, if he decides that assignee applies to the assignee at the time the interest is demanded of him, he has to also inquire if there is a present holder, and what rights, if any, the holder has against the assignee in this case; he has to decide whether any interest passed to Robinson in these certificates, the judgment in the Court of Claims having been fully satisfied and paid before the assignment, and there appearing nothing of record to show that these certificates were ever delivered to Robinson.

He must go further; he must next decide that "redeemed," as used in the act, means more than an actual redemption, and he must in this case say that the payment of the judgments in the Court of Claims, although there is nothing on

their face to show that there is a payment of the certificates, was a payment and redemption of the certificates within the meaning of the act, and that he, the Treasurer, has *no discretion* in deciding the above questions, but he must decide them all *in favor of the relator;* he would be compelled to decide that the payment of the judgments was a payment and redemption of the certificates, when he, by the act of July 5, 1884, was prohibited from paying any such certificates.

Now the relator asks the defendant in this case to decide all of these questions in her favor, and to decide them even contrary to law, and still she maintains that she has a standing in court by writ of mandamus because she has presented such a case as calls on the Treasurer of the United States merely to do a ministerial act, and if he refuses to do this act the relator says that the court could by its writ compel him to perform it. The appellant contends that the case as presented in the petition is not one that comes within the definition of a ministerial act, and that therefore the writ of mandamus will not lie.

In the case of Mississippi *vs.* Johnson, 4 Wallace, 475, the court defined a ministerial duty in this clear language:

"A ministerial duty, a performance of which may in proper cases be required of the head of a department by judicial process, is one in respect of which nothing is left to discretion; it is a simple, distinct duty arising under circumstances admitted or approved to exist and imposed by law."

It is not necessary for us here to consider this question in all its phases, nor is it necessary to make our case by argument merely. The matter has been so fully and ably adjudicated by the Supreme Court of the United States that we need only cite the authorities that we rely on. Two leading cases show authoritatively when the court may and when it may not issue a writ of mandamus against an executive officer of the Government, and they are Kendall *vs.*

The United States, 12 Peters, 524, and Decatur *vs.* Paulding, 14 Peters, 497. In the first case the act required by the law to be done by the Postmaster General was simply to accredit the relators with the full amount of the award of the solicitor. The Supreme Court of the United States held that this act was a precise, definite act, purely ministerial, and about which the Postmaster General had no discretion whatever. The law upon its face showed the existence of the accounts between the relator and the Post-office Department. No money was required to be paid, and none could have been drawn out of the Treasury without further legislation, if the credit desired to be made in that case overbalanced the debit standing against the relators. The court further said:

"There is no room for the exercise of any discretion, official or otherwise. All that is shut out by the direct and positive language of the law, and the act required to be done is in every just sense a mere ministerial act."

In the second case above cited Mrs. Decatur, who was pensioned under a general pension act, applied for a pension under an act passed for her benefit. Paulding, Secretary of the Navy, decided that she could not be pensioned under both acts, as she claimed she had a right to be, and called upon her to choose if she would be pensioned under the general act or the one passed for her special benefit. She applied for a writ of mandamus to compel the Secretary to grant her a pension under the act passed for her special benefit, which was refused. The court said:

"The duty required by the resolution is to be performed by him (the Secretary of the Navy) as the head of one of the executive departments of the Government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the Government, in the administration of the various and important concerns of his office, is continually

required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel, and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion were to be exercised.

"If a suit should come before this court which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a department; and if they supposed his decision to be wrong, they would, of course, so pronounce their judgment; but their judgment upon a construction of a law must be given in a case in which they have jurisdiction and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment; nor can it by mandamus act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the ordinary discharge of his official duties."

The above cases illustrate these principles and show the difference between executive duties and ministerial acts.

And in this case here before this court it is necessary for the Treasurer of the United States to decide something, and if he is uncertain as to his decision, he has the right to inquire of and have the advice of the law officers of the Government, and, that being so, the duty imposed upon him is not merely a ministerial act.

The case relied upon by the court below in deciding this case was that of Dunlap *vs.* Black, 128 United States, 40. The petition for a writ of mandamus to direct the Commissioner of Pensions Black to increase his pension was refused by the supreme court of the District of Columbia, and the relator appealed to the Supreme Court of the United States.

After discussing the two cases before referred to, the court said:

"The principle of law deducible from these two cases is not difficult to enounce. The court will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, *even where those duties require an interpretation of the law, the court having no appellate power for that purpose;* but when they refuse to act in a case at all, or when, by special statute or otherwise, a mere ministerial duty is imposed upon them—that is, a service which they are bound to perform without further question—then, if they refuse, a mandamus may be issued to compel them.

"Judged by this rule, the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide. He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior, as evidenced by his signature to the certificate. Whether, if the law were properly before us for consideration, we should be of the same opinion or of a different opinion is of no consequence in the decision of this case. We have no appellate power over the Commissioner, and no right to review his decision; that decision and his action taken thereon were made and done in the exercise of his official functions. They were by no means merely ministerial acts."

The part of the decision that is relied upon by the appellee in this case and by the court below to sustain the mandamus reads as follows:

"But when they refuse to act in a case at all, or when by special statute or otherwise a mere ministerial duty is imposed upon them that is a service which they are bound to perform without further question, then if they refuse a mandamus may be issued to compel them."

The court below said that this was a special statute, imposing a specific duty, and that therefore the duty or the act imposed was merely a ministerial duty; but the Supreme Court uses the words "when by special statute or otherwise

a mere ministerial duty is imposed upon them;" so that we are driven back to the one question and the only question, What is a ministerial duty? and the answer is that wherever the party can do an act without exercising any discretion, without interpreting any law, but merely has to perform an act which he is bound to perform without further question, as the crediting of an account or the delivery of a patent, then the duty is ministerial; but when there is any judgment or discretion involved in the carrying out or performing of the act, the duty is not ministerial.

Another contention made was that the act in this case is so certain that it needs no construction. If you applied the act merely to those certificates that have been redeemed and are in possession of the Treasurer of the United States, and hold the person who was the owner, holder, or assignor at the time of the redemption is the only person entitled to receive payment, that might be so; but the relator in this case by her own petition makes the act indefinite. But even if the act were plain, still the Treasurer has a right to interpret it.

In the case of Decatur *vs.* Paulding, before referred to, the Supreme Court say:

"The contention of the relator is that the interpretation he passed upon the act is too obviously correct to admit of dispute, and that this court has so decided; but it does not follow because the decision of the comptroller and auditor may have been erroneous that the assertion of the relator to that effect raises a cognizable controversy as to their authority to proceed at all. What the relator sought *was an order coercing these officers to proceed in a particular way*, and this order the supreme court of the District of Columbia declined to grant. If we were to reverse the judgment on the ground urged, it would not be for want of error in the auditor to audit the account and in the comptroller to refuse to pass upon it, or because these officers had disallowed what they ought to have allowed, and erroneously construed what needed no construction. This would not in any degree involve the validity of their authority."

So that our contention is that the relator is not entitled to the relief that she seeks, because she has not shown a case that requires the performance of a merely ministerial duty on the part of the Treasurer of the United States, but that she has shown a case wherein it was necessary for the Treasurer of the United States to decide whether the certificates mentioned were redeemed, or whether they were ever entitled to redemption, or whether they had ever been paid, or whether the payment amounted to a redemption, or whether relator was an assignee within the meaning of the act, and we hold that the Treasurer of the United States having decided these matters adverse to the petitioner, the petitioner cannot come here and ask this court to interfere by the writ of mandamus; so that therefore we respectfully submit to the court that in this case the Treasurer of the United States was fully warranted in deciding the case in the manner in which he did, and, further, that the supreme court of the District of Columbia had no power over him to review his decision, and we therefore ask that the judgment of the court below be reversed and the cause be remanded, with direction to dismiss the petition for the writ of mandamus.

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No. 86.

(Brief of Atty. Gen Richards) for Petitio

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In the Supreme Court of the United States.

OCTOBER TERM, 1899.

ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner,
v.
THE UNITED STATES EX REL. MARIE A. Valentine.
} No. 86.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner,
v.
THE UNITED STATES EX REL. MARIE A. Valentine.
No. 86.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

STATEMENT.

The facts in this case are stated in the petition for mandamus:

The petition for the writ of mandamus was filed by the relator, Marie A. Valentine, and therein she alleges that one Charles E. Evans (as assignor of your petition), during the years 1871 to 1874, inclusive, was carrying on the business of a contractor, laying concrete and brick pavements on sidewalks and streets, and making other improvements on streets and avenues in the city of Washington, and that he carried on said business under the

name of "Evans Concrete Company;" that the work done and materials furnished by said Evans were under contracts with the duly authorized officials of the District of Columbia, being with the board of public works of said District, and that the amount due him was a large sum, and much of it remained unpaid on the 1st day of August, 1874.

On the 1st day of August, 1874, certain claims under said contract had been duly submitted for examination and audit in pursuance of the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874; that said accounts were approved by the board of audit, and after having duly audited the said claims, they were signed and issued for delivery. The two certificates mentioned aforesaid, said certificates being set out in record on pages 2 and 3 thereof; that at the time the said certificates were issued claim had been made by the Commissioners of the District of Columbia (the successors of the board of public works) that the said Charles E. Evans was liable for the expense of repairs which were needed on certain portions of the streets laid by him. The petition further alleges that afterwards it appeared that these claims were not well founded, but the said board of audit of the District of Columbia, instead of delivering the said certificates to the said Evans, withheld them and delivered them to the Commissioners of the District of Columbia, and that the said Commissioners detained and withheld the certificates from the said Evans, claiming them as collateral security for the payment of their unauthorized

claims for repairs to said pavements; that said certificates remained until the 9th day of June, 1880, deposited in a tin box in the office of the Treasurer of the United States, the key of the said box being in the possession of the said Treasurer, who held it and the contents of said box subject to the control of the Commissioners of the District of Columbia. The petition further alleges that prior to the 1st day of January, 1880, the said certificates had been assigned and transferred to Thomas J. Fisher, a resident of the said District of Columbia, and prior to the 13th day of January, 1881, the Treasurer of the United States had been duly requested to convert the same into 3.65 bonds, in pursuance of the act of Congress dated January 16, 1880, and at divers times, both before and after said 13th day of January, 1881, the said Thomas J. Fisher and his assignees demanded and requested that said certificates be redeemed by issuing in the place thereof 3.65 bonds, as approved in section 9 of the act of June 16, 1880; that the said Treasurer refused each and every time the demand to issue bonds for the said certificates, on the ground solely, as your petitioner is informed and believes, that the Commissioners of the District of Columbia made the claim aforesaid; that thereafter, in December, 1880, the said Thomas J. Fisher, in pursuance of sections 1 and 2 of the act of Congress passed January 16, 1880, chapter 243, commenced an action in the Court of Claims of the United States against the District of Columbia to recover, in addition to a large number of other claims, the amount certified by said certificates of the board of audit mentioned aforesaid; that during the December

term 1889–90 of said court the executors of the said Thomas J. Fisher were, after a suggestion of the death of the said Fisher, made parties to the record, and on the 19th day of June, 1890, the petitioner alleges upon information and belief that an agreement was entered into by the parties interested to dispose of said action by the delivery of the said certificates to the executors of Fisher, and that on the 9th day of June, 1890, the Commissioners of the District of Columbia obtained from the said Treasurer of the United States and delivered to the plaintiffs' attorney in said action the said two certificates mentioned aforesaid, and that the same attorney for the plaintiffs took said certificates into his possession, and that thereupon the plaintiffs' attorney presented the said certificates to the Treasurer of the United States and requested him to issue for the said certificates 3.65 bonds; that the Treasurer of the United States *refused and declined to redeem the said certificates* or to issue bonds for the payment thereof or in any way to pay the same unless a judgment of the said Court of Claims, in which the said action upon the said certificates had been brought, should be first entered for his protection; that thereupon a judgment upon the said certificates was entered in the aforesaid action in favor of the defendant.

The petition goes on then to state how the judgments were paid, and it alleges that, prior to the rendition of the said judgment by the said Court of Claims, all claims on the part of the plaintiffs, other than the two certificates, were eliminated from the case, and that judgment was entered in the Court of Claims for the amounts of the two certificates, the pleadings having been amended

for that purpose, and that the judgments, after ninety days, were duly paid by the Treasurer of the United States, with interest at the rate of 3.65 per cent.

Then the petition alleges that the executors of the said Fisher, prior to the payment of the said amount, in pursuance of an order of the supreme court of the District of Columbia, assigned and transferred to Marcus W. Robinson all of the several claims, and that the said Marcus W. Robinson afterwards assigned the claims to your petitioner, the assignments being marked Exhibits 1 and 2 and set out on pages 8, 9, and 10 of the record.

Then the petition sets out the act of August 13, 1894, and says that the petitioner has applied and presented her claim to the Treasurer of the United States for such residue of the interest upon the amounts of said board of audit certificates and requested payment thereof, and *laid all of the facts* before the Treasurer, but that the said Treasurer refused to make the payment on the ground that the said board of audit certificates *had not been redeemed by him or his predecessor*, and a copy of said refusal is set out on page 10 of the record. The petition then prays for a writ of mandamus to compel the Treasurer to pay the interest under the act of August 13, 1894.

To this petition the defendant, Ellis H. Roberts, filed a return, in which he stated that the board of audit certificates, so called, mentioned in said petition *were not redeemed by him or any person holding the office of Treasurer of the United States at any time*, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in said petition mentioned as having relation to the said certificates, or either of them,

were paid upon such judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge or any official record in his office showing or tending to show upon what claim or claims either of said judgments are based. Then, as part of said return, are set out the judgments of the Court of Claims and the receipts of the attorney for the payment thereof, which said receipts show that *both of said judgments were paid before there was any assignment made by the executors of Thomas J. Fisher to Marcus W. Robinson.*

To this return the relator filed a demurrer, which alleged that the matters contained in the answer of the defendant, Ellis H. Roberts, were not sufficient in law to bar or preclude the said relator from having or maintaining her aforesaid petition for the writ of mandamus against him. The cause was then heard upon this demurrer, and the court made an order granting the writ of mandamus, which said order is fully set out on pages 14 and 15 of the said record. From this the defendant Roberts, in open court, noted an appeal to the court of appeals.

The court of appeals affirmed the judgment.

ASSIGNMENT OF ERRORS.

1. The court erred in sustaining the demurrer.

2. The court erred in not dismissing the petition of the relator, as the same shows on its face that the relator is not entitled to the relief prayed for.

3. The court erred in holding that the relator was an assignor of the said board of audit certificates mentioned in the petition.

4. The court erred in holding that said certificates were redeemed by the Treasurer of the United States.

5. The court erred in not holding the return a sufficient answer to the matter set up in the petition.

6. The court erred in holding that the case presented by the petition could be corrected by a mandamus.

7. The court erred in holding that mandamus would lie against the present Treasurer.

ARGUMENT.

By an act of Congress, approved June 16, 1880, entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia," conferring jurisdiction on the Court of Claims to hear the same, and for other purposes, chapter 243 (21 Stat., 284), two modes of relief are provided for claimants and, among others, the holders of the certificates which are in dispute in this action. The first section of the statute provided for suits being brought for the holders of these certificates. In the second section of the statute a limitation was enacted that all claims should be barred if not brought within six months. The ninth section provided that the Treasurer of the United States, as ex officio Sinking Fund Commissioner of the District of Columbia, was authorized and directed to redeem the outstanding certificates of the late board of audit created by the act approved June 20, 1874, with the interest accrued on said certificates, by

issuing and delivering to the owners or holders of said certificates bonds of the District of Columbia as provided in section 7 of the act approved June 20, 1874, entitled "An act for the government of the District of Columbia and for other purposes," and acts amendatory thereof, said bonds to bear the same date and same rate of interest, and interest and principal to be payable at the same time and fully to abide the conditions, pledges of faith, and exemptions of the bonds authorized to be issued by the seventh section of said act, to be signed by the said treasurer as ex officio sinking fund commissioner of the District of Columbia, and numbered, countersigned, sealed, and registered as the said seventh section of said act prescribes, attaching all coupons of said bonds up to the date of said certificate.

Under the provisions of the first section of this act this assignor brought suit in the Court of Claims not only for these certificates, but for hundreds of thousands of dollars. That suit was permitted to linger for several years and finally was determined by a compromise, the larger part of the claims against the District having been abandoned. This materially changed the character of the indebtedness of the District so far as these securities are concerned. What the terms of that compromise were, and what inducement there was to make it upon the part of the District, this record does not disclose.

The act of 13th August, 1894, upon which this proceeding is based, provided that "the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June 16, 1880,

the residue of the 2.35 per cent per annum of unpaid legal rates of interest due upon said certificates from the date of approval of said act providing for their redemption. (28 Stat., 271.) The Treasurer returns that neither he nor any person holding the office of Treasurer of the United States had at any time redeemed the said certificates and that he had no official knowledge nor was there any official record in his office showing or tending to show that the said judgments paid by the Treasurer of the United States were paid on account of the said certificates. These facts are not disputed.

This act of 1894 applies only to such certificates as were redeemed by the Treasurer under the act approved June 16, 1880, and the petition itself shows that these certificates were never redeemed and are not now in the possession of the Treasurer of the United States, and the answer of the respondent denies that they were ever redeemed by him or by any person whatsoever. The statements made in the petition and answer conclusively show that the certificates were never redeemed.

The petitioner claims that "redeemed" means merely payment, and that they were paid, so that such payment is equivalent to redemption; but the act of Congress on the subject of these certificates first provided for redemption and then for payment; and when the judgments set out as part of the respondent's answer were paid, the Treasurer of the United States was prohibited from paying these certificates by the act of Congress of July 25, 1884 (23 Stat., 131); which act states that no payment shall be made of any certificates issued by the late board of audit of the District of Columbia under author-

ity of the act approved June 20, 1874, that shall not be presented for payment within one year from the date of the approval of the act. Both the petition and the answer show that the certificates were not paid by the Treasurer of the United States, and that the only money ever recovered by the assignees of said certificates, the executors of Fisher, was received on the judgments of the Court of Claims, which were fully paid and settled on September 12, 1890.

These certificates were never redeemed or paid, except through the judgment of the Court of Claims; and yet it has been insisted that in considering this petition for the writ of mandamus it should be so determined that the certificates were redeemed, because a mandamus could have been issued against the Treasurer of the United States to compel him to have sooner redeemed the certificates. If this were so, and we insist upon that as settling this whole question, why was not a mandamus applied for under the act of 1880? Why this long delay?

These certificates were never delivered to the persons claiming them until after the passage of the act prohibiting their redemption and payment, but they were held as collateral security for the expense of repairs which the Commissioners of the District of Columbia held were due by the said Evans; and, certainly, no mandamus could have been issued to compel the delivery of the certificates under such circumstances. The fact must not be lost sight of that these certificates were not held as ordinary retains under the contracts which the District of Columbia made for her public works. That

retain was but 10 per cent of the amounts which had been audited. But these certificates were held, as the petition discloses, because the contractor, Evans, was under obligation to make repairs upon the pavements which he had laid.

We insist that it was error to decide that this was a ministerial act upon the part of the Treasurer of the United States. This respondent traveled in the footsteps of his predecessors. They had put a construction upon this statute. It is settled law that a succeeding officer shall not review the action of his predecessor.

And, again, the elaborate discussion upon the part of both of the courts below shows that the questions of construction are not without difficulty. The Treasurer had to decide that to "redeem," as used in the act, meant more than an actual redemption; and he had to determine in this case that the payment of the judgments in the Court of Claims, although there is nothing on their face to show that they are as payment of the certificates, was a payment and redemption of the certificates within the meaning of the act, and that he, as Treasurer, has no discretion in deciding the above questions, but he must decide them all in favor of the relator; that he would be compelled to decide that the payment of the judgments was a payment and redemption of the certificates, when he, by the act of July 25, 1884, was prohibited from paying any such certificates.

The relator asks that all of these questions in this case be decided in her favor; and maintains that she has a standing in court by writ of mandamus, because she has presented such a case as calls on the Treasurer of the

United States merely to do a ministerial act; and if he refuses to do this act the relator says that the court, by its writ, may compel him to perform it.

The respondent contends that the case as presented in the petition is not one that comes within the definition of a ministerial act, and that, therefore, a writ of mandamus will not lie.

. This court has so clearly passed upon what is a ministerial duty that it is only necessary to allude to some of its decisions. In the case of *Dunlop* v. *Black* (128 U. S., 40), the petition for a writ of mandamus to direct the Commissioner of Pensions (Black) to increase a pension was refused by the supreme court of the District of Columbia and the relator appealed to the Supreme Court of the United States. That court, in discussing previous cases, said:

> The principle of law deducible from these two cases is not difficult to announce. The court will not interfere by mandamus with the executive officers of the Government in their exercise of their ordinary official duties, even where those duties require an interpretation of law, the court having no appellate power for that purpose. But when they refuse to act in a case at all, or when by special statute or otherwise a mere ministerial duty is imposed upon them, that is a service which they are bound to perform without further question; then if they refuse a mandamus may issue to compel them.
>
> Judged by this rule the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide. He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior as evidenced by his signa-

ture to the certificate. Whether, if the law were properly before us for consideration we would be of the same opinion or a different opionion, is of no consequence in the decision of this case. We have no appellate power over the Commissioner and no right to review his decision. That decision, and his action taken thereon, were made and done in the exercise of his official functions. They were by no means merely ministerial acts.

The position upon the part of this petitioner is that this redemption act is so certain that it needs no construction. If you applied the act merely to those certificates that have been redeemed and are in possession of the Treasurer of the United States, and hold the person who was the owner, holder, or assignee at the time of the redemption as the only person entitled to receive payment, that might be so; but the relator in this case, by her own petition, makes the act indefinite. It is clearly absolutely certain that these treasurers, several of whom were called upon to act in this very case, were clothed with the necessity of interpreting this statute. The Treasurer of the United States was required to determine whether the certificates mentioned were redeemed, whether they were entitled to redemption, whether they had ever been paid, whether payment amounted to redemption, and what effect the judgment of the Court of Claims had upon their right to redemption. And yet it is insisted that all this was in the discharge of a mere ministerial duty.

ROBERT A. HOWARD,
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JOHN K. RICHARDS,
Solicitor-General.

No. 86.
Reply Brf. of Atty. Gen. (Roberts) for Petitioner
Filed Dec. 15, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner,
v.
THE UNITED STATES EX REL. MARIE A. Valentine.
} No. 86.

REPLY BRIEF FOR PETITIONER.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

ELLIS H. ROBERTS, TREASURER OF THE United States, petitioner,
v.
THE UNITED STATES EX REL. MARIE A. Valentine.
No. 86.

REPLY BRIEF FOR PETITIONER.

I.

There are no new questions raised here for the first time. The return of the writ of certiorari shows that the complete transcript of the record in the court of appeals in the District of Columbia was sent up to this court. All the questions of the supreme court of the District of Columbia and the court of appeals were raised upon demurrer to the return of the Treasurer to the petition for a writ of mandamus. The return of the Treasurer to the petition for the writ of mandamus was:

> Comes now the defendant and for cause why the writ of mandamus should not issue, as in and by the petition in the above-entitled cause prayed, shows

> that the certain board of audit certificates, so called, in the said petition mentioned, namely, the certificates numbered 8879 and 19429, were not redeemed by him or any person holding the office of Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge nor has he any official record in his office showing or tending to show upon what claim or claims either of the said judgments was based. (Tr., p. 10.)

This return states exactly what he did as treasurer and what the records of his office showed were done by his predecessors. Confined to the strictest requirements of the petition and return, it can not be seen that new questions are praised here.

II.

"Counsel for the relator and the treasurer well knew that the relator was the owner of all of the interests by virtue of due assignments. The courts below say: Had his denial of payment been founded on the insufficiency thereof after due inquiry, the writ of mandamus would not lie. Had that objection been set up, the relator might have satisfied it by supplementary proof or else by proceedings at law for the establishment of her claim as against Evans and immediate assignees; but it was

not raised either directly or by imputation in the written statements of the grounds upon which payment was refused, nor does the return of the defendant to the order to show cause deny the genuineness or regularity of the relator's claim as assignee; hence it must be regarded as admitted."

The petitioner raises no objection to the genuineness and regularity of the assignments. The objection is that these assignments did not cover those certificates. The assignments are as follows:

Exhibit.—Assignments 1 and 2. (Tr., pp. 8 and 9.)

Know all men by these presents that we, Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, as executors of the last will and testament of Thomas J. Fisher, deceased, late of the District of Columbia, in consideration of the request of Lillian Evans and Charles E. Evans, and in pursuance of an order of the supreme court of the District of Columbia, sitting at a special term for the transaction of probate business on the 15th day of September, 1890, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over, unto Marcus W. Robinson all the right, title, and interest which said Thomas J. Fisher had, and all which we, as his executors, now have or may at any time be entitled to, in and to all claims against the District of Columbia arising out of the contracts made by said District of Columbia, or the Commissioners or board of public works thereof, with Charles E. Evans, or the Evans Concrete Pavement Company, *and now or heretofore the subject of action against the District of Columbia, in the name of or for the use of said Thomas J. Fisher, as assignee of said Charles*

Evans, to have and to hold the same unto the said Marcus W. Robinson, his executors, administrators, and assigns, to his and their use; hereby constituting him and them our attorney and attorneys, irrevocable, to collect and receive the same in our names or otherwise, but at his own costs and expenses, saving us harmless from all charges and liabilities of any kind in respect thereto.

And we hereby agree to execute any further instruments or conveyances necessary or proper for the further effectuating of the said assignment and transfer of any legal interest in said claims or their proceeds.

EDWARD J. STELLWAGEN,
THOMAS M. GALE,
GEORGE E. HAMILTON,
Executors of the last will and testament of Thomas J. Fisher.

DISTRICT OF COLUMBIA, *ss:*

On this —— day of September, 1890, before me personally came Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, to me known and known to be the persons mentioned in and who executed the foregoing instrument, and they thereupon acknowledged to me, jointly and severally, that they executed the same as the executors of the will of Thomas J. Fisher, deceased.

[Notarial seal.] THOMAS J. MALONE,
Notary Public, D. C.

Know all men by these presents, that I, Marcus W. Robinson, of Brooklyn, New York, for good and valuable consideration to me paid by Marie A. Valentine, of the city of Brooklyn, the receipt of which is acknowledged, have assigned, transferred, and set over unto said Marie A. Valentine all the claims, demands, and interests of every nature,

whether in action or otherwise, arising out of the contracts made by the District of Columbia with Charles E. Evans or the Evans Concrete Co., and heretofore the subject of action against the District of Columbia in the name of or for the use of one Thomas J. Fisher, being all the claims assigned to me by the executors of said Thomas J. Fisher, September 15, 1890, to have and to hold the same to the said Marie A. Valentine, her executors, administrators, and assigns forever.

Witness my hand and seal this first day of January, 1892.

MARCUS W. ROBINSON.

STATE OF NEW YORK,
County of Kings, ss:

On this 1st day of January, 1892, before me personally appeared Marcus W. Robinson, to me personally known and known to be the person mentioned in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

But these certificates (admitting for that purpose the allegations of the relator's petition) were merged in judgments of the Court of Claims rendered on June 12, 1890, in favor of David M. Davis and Edward J. Stellwagen, Gale and Hamilton, executors of Fisher, deceased, assignee of Charles E. Evans.

DAVID M. DAVIS
v.
THE DISTRICT OF COLUMBIA. } 246.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises,

find in favor of the claimant, and do order, adjudge, and decree that the said David M. Davis, claimant, do have and recover in the manner provided by the act of June 16, 1880, chapter 243, in the sum of nine hundred dollars ($900) upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 12th day of June, A. D. 1890.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

EDWARD J. STELLWAGEN, THOMAS M. Gale, and GEORGE E. HAMILTON, executors of THOMAS J. FISHER, deceased, assignee of CHARLES E. EVANS,
v.
THE DISTRICT OF COLUMBIA. } 246.

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1890, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, assignee of Charles E. Evans, do have and recover, in the manner provided by the act of June 16, 1880, chapter 243, the sum of nineteen thousand six hundred and twenty-five 65/100 dollars upon debts of the District of Columbia due and payable August 1, 1874, within the meaning of the sixth section of said act.

A true copy of record.

In testimony whereof I have hereunto set my

hand and affixed the seal of said court, at Washington, this 12th day of June, A. D. 1890.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

These judgments were paid September 12, 1890, as follows [Tr., pp. 11, 12]:

WASHINGTON, D. C., *September 12, 1890.*

Received from the Treasurer U. S. his check, No. 84233, payable to the order of David M. Davis, for fourteen hundred twenty-nine 29/100 dollars ($1,429.29), in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims in cause No. 246, David M. Davis v. The District of Columbia.

Principal of judgment, cause No. 246...	$900.00
Interest from August 1, 1874, to September 11, 1890, at 3.65 %	529.29
	1,429.29

GEORGE A. KING,
Attorney of Record.

WASHINGTON, D. C., *September 12, 1890.*

Received from the Treasurer U. S. two checks, as follows: No. 84235, for eighteen thousand six hundred sixty-seven 49/100 dollars ($18,667.49), and No. 84236, for twelve thousand five hundred x/00 dollars ($12,500.x), both payable to the order of Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, executors of Thomas J. Fisher, deceased, assignees of Charles E. Evans, in full satisfaction and payment of the principal, with interest thereon, of judgment of the U. S. Court of Claims

in cause No. 246, Edward J. Stellwagen et al. vs. The District of Columbia.

Principal of judgment, cause No. 246.	$19,625.65
Interest from Aug. 1, 1874, to Sept. 11, 1890, at 3.65%.....	11,541.84
	31,167.49

B. E. VALENTINE,
Att'y of Record.

Now the return of the treasurer is explicit as to his own knowledge and the records of his office upon these points. It was subsequent to these transactions that any assignments were made. The assignment by the executors of Fisher, the first assignee, must have been made after the payments of the judgments. This assignment was to one Marcus W. Robinson. It is not dated, but in it is recited that it was made pursuant to an order of the probate court of September 15, 1890, which date is repeated in the following assignment.

Robinson's assignment to this relator was not made until January 1, 1892.

Under these assignments and these facts how could this relator ever have been an assignee under the act of 1894? It has always been insisted upon by the Treasurer that the term, "the assignees" in the act of August 13, 1894, must mean assignees at the time of the redemption. The context, "owners, holders, or assignees of all board of audit certificates redeemed," clearly shows this.

At the time of the execution of the assignment to Robinson there were no certificates in the possession of the executors of Fisher turned over to Robinson and

which could, under existing statutes, have been redeemed by the then Treasurer. The time for their presentation for redemption had already passed. Besides this, the terms of the assignment from Fisher's executors to Robinson, taking into consideration the date of the assignment, clearly exclude these certificates from inclusion in that paper.

III.

These certificates never could have been duly presented for redemption. As originally issued they showed upon their face that there had been a certain amount of contract work done by Evans & Co. for which he never was entitled to any credit, but they were never delivered to Evans & Co. because of the unsettled and contradicted accounts between those contractors and the District of Columbia. They were held, therefore, to await a proper and definite settlement of all these accounts. And although it is stated with much particularity in the petition of the relator that demand was made for the redemption of these certificates by Fisher, the assignee, before the act of June, 1880, yet Fisher could not be held to be the owner or holder of such certificates. If he had been such, it may be possible that he could then have had allowed a writ of mandamus to compel their redemption under section 9 of that statute.

But he elected to bring suit against the District of Columbia on all the claims, amounting to several hundreds of thousands of dollars, in which were included these two certificates. The terms of that suit and its conditions and circumstances and compromises are fully set out in the statements of the case.

IV.

These certificates could not be presented for redemption under the act of 1880, nor the act of July 5, 1884, prescribing a term of limitation. As we have said, they were not the property of Fisher, and were in no sense the character of certificates contemplated by the act of 1880.

It is beyond dispute that the certificates were not redeemed under the provisions of section 9 of the act of June 16, 1880, and within the limitation made by the act of July 25, 1884. No matter what may be the technical form of the allegations of the petition for mandamus, could they as a matter of fact have been presented for redemption under those statutes, by the holder or owner? Who was the holder or owner? They had never been delivered to Evans or any assignee of him. It is true they were in the possession of the then Treasurer; but they were not subject to control of anyone but the District Commissioners. They were not, in any sense, in the condition of the certificates referred to in the statute. *If* Fisher, as assignee of Evans, was entitled to their possession for the purpose of presentation for redemption, he could have obtained that possession by a proper legal proceeding. The mere demand for their conversion into 3.65 bonds gave no authority to the Treasurer to redeem them, nor did it alter the situation of the securities.

Fisher, as assignee of Evans, then brought his suit against the District for several hundred thousand dollars, in which was included these certificates. (Tr., pp. 2, 4.)

This suit was compromised June 9, 1890, and the certificates delivered to Fisher's attorney, who presented them to the *then* Treasurer for payment, which was refused.

If the theory and contestation of the relator is correct, Fisher could *then* have compelled the Treasurer to redeem these certificates. None dreamed of such a proceeding, because of the limitation statute of 1884.

Fisher returned to the Court of Claims, was permitted to amend his petition there, striking out all the numerous claims except the certificates alone, for the amount of which he was given judgment. (Tr., 5.) Now, this amount bore interest from August 1, 1874, to September 11, 1890, at 3.65 per cent. This interest was computed for a period more than five years after the time within which the certificates had to be presented for redemption. The judgments were paid (Tr., 11, 12), as we have seen. It is true that the principal of these judgments represented the face amounts of the two certificates; but still, they were judgments rendered on a compromise for stated sums. Besides, only one of them was in favor of the executors of Fisher.

All this was in 1890. The return to the petition for mandamus is explicit as to the records of the judgments and payments.

Certainly these certificates were not *redeemed* under the act of 1880. Whatever may be claimed as to the purpose of the act of August 13, 1894, providing for the payment of this interest, payment of this judgment of the Court of Claims, under the circumstances, does not comply with the requirements of "redeeming."

The statute is called general and remedial. It may be remedial in the general use of that term; it is not remedial in the legal sense. The language of the act is peculiar: "To pay the residue of 2.35 per centum per annum of unpaid legal rates of interest due upon said certificates," etc. Strictly, there was no unpaid legal rate of interest due. What was *meant* by legal rate of interest was undoubtedly the rate of interest that judgments, decrees, etc., should bear in the District of Columbia, as provided by statute (Rev. Stat. Dist. Col., sec. 713). But there is no provision of law making these certificates bear that rate of interest. On the contrary, section 7 of the act of 1874 expressly provides that the bonds into which these certificates could be converted should bear 3.65 per cent.

And when the officers of the Treasury came to construe the words "accrued interest," in the ninth section of the act of 1880—the "redeeming section"—after much doubt and hesitation they resolved and acted upon the construction by allowing interest on the bonds exchanged for the certificates, computed from the date of the certificates, and thus paid the accrued interest on the certificates.

As there was no limitation in this act of 1880, and it became advisable to retire these certificates, the statute of limitations of 1884 was passed.

This was the condition when the act of 1894 was passed. This act clearly provides (disregarding the phraseology) for the payment of an additional 2.65 per cent on a certain class of certificates which had been redeemed with interest at the Treasury. If more interest was *due* upon them, that could have been recovered

by suit under the first section of the act of 1880. Fourteen years elapsed before the additional interest was given. It can be considered in no other light than as a bounty. Examination of the statutes above cited shows this. Anyway, the Treasurer was bound by the terms of the statute. He could not construe "redeem" to mean payment. If the statute gave a right to holders of certificates which had not been actually redeemed under section 9 of the act of June 16, 1880, this was a matter for judicial construction. If parties in that condition, and there are notoriously outstanding certificates which had not been redeemed (see act March 3, 1899, 30 Stat., 1383), have no remedy by action in the courts, they must go to Congress, which has given the relief to a certain defined class of holders.

In this connection there is a consideration which should not be overlooked. These certificates were presented by the attorney of Fisher's executors after their surrender by the District Commissioners on June 9, 1890, to the Treasurer for redemption and met with refusal. He then took his judgment. There is some correspondence in the record, pages 22, 23, 24. The matters therein referred to appear never to have been acted on.

If the relator ever had any right to those certificates, and thereby to this additional interest, that right became hers on the passage of the act, August 13, 1894. But, according to the allegations of her petition (Tr., p. 6, par. xxii, and p. 9), she did not make demand for the interest until October, 1897. It is true the Treasurer bases his refusal upon the grounds that neither of the

certificates was redeemed by the Treasurer and were not in his possession; and that the judgments of the Court of Claims, referred to by relator, did not state they were in lieu of or upon debts of the District of Columbia represented by board of audit certificates. Shortly after the writ of mandamus was applied for. We think the petition and return in the mandamus proceedings fairly show that the action of the different Treasurers during these times was substantially the same. Certainly if the relator was entitled to a mandamus at all she could have obtained it from another and different Treasurer than the present one. She had no right to delay, whether that former Treasurer refused or not (which is not disclosed in the record). That delay in the application for the writ was more than three years. If the relator had been entitled to an action to recover this amount, the statute of limitations would have prevented her from bringing it at the time she applied for this writ of mandamus.

Although this was not set up as a defense in the court below, as these amounts are to be paid by the Treasurer out of funds provided by the United States as well as the District of Columbia, and the facts appear upon the record, it ought to have a bearing upon the right to issue this writ against the present Treasurer, who was not in office at the time of the passage of the act of 1894, and who becomes responsible individually for costs if the writ proceeds against him.

In view of the foregoing suggestions we have little to add to what was said in our former brief upon the contention that the act of 1894 directed the Treasurer to

perform a merely ministerial act. The construction of the acts of 1880 and of 1894 were required of him; and he acted after the exercise of his best judgment. We have argued that he was clearly correct in that construction. But whether the court would agree with him or not, if the law were properly before them, they have said they would not review his decision. The decision was made by him in his capacity as Treasurer, made, for all purposes, commissioner of the sinking fund, disbursing the moneys of the United States and the District of Columbia. There was no special or extra official for him to perform.

The doctrines as to the issuance of this writ in cases like the one at bar were clearly summarized in the late case of *United States ex rel The International Contracting Company* v. *Lamont* (128 U. S., 303) by Mr. Justice White, delivering the opinion of the court, as follows:

> Mandamus will only lie to enforce a ministerial duty, as contradistinguished from a duty which is merely discretionary. The duty to be enforced by mandamus must not only be merely ministerial, but it must be a duty which exists at the time when the application for the mandamus is made. The obligation must be both peremptory and plainly defined.

We have attached hereto copies of the statutes whose examination is rendered necessary by the action of the court below.

ROBERT A. HOWARD,
United States Special Assistant Attorney.

JOHN K. RICHARDS.
Solicitor-General.

APPENDIX.

AN ACT for the government of the District of Columbia, and for other purposes. Approved June 20, 1878 (18 Stat., 116).

* * * * *

SEC. 2. That the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint a commission, consisting of three persons, who shall, until otherwise provided by law, exercise all the power and authority now lawfully vested in the governor or board of public works of said District, except as hereinafter limited; and shall be subject to all the restrictions and limitations now imposed by law on said governor or board; and shall have power to apply the taxes or other revenues of said District to the payment of the current expenses thereof, to the support of the public schools, the fire department, and the police, and to the payment of the debts of said District secured by a pledge of the securities of said District or board of public works as collateral, and also to the payment of debts due to laborers and employees of the District and board of public works; and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia and the board of public works, and exercise the power and authority aforesaid; but said commission, in the exercise of

such power or authority, shall make no contract, nor incur any obligation other than such contracts and obligations as may be necessary to the faithful administration of the valid laws enacted for the government of said District, to the execution of existing legal obligations and contracts, and to the protection or preservation of improvements existing, or commenced and not completed, at the time of the passage of this act. * * *

SEC. 6. That it shall be the duty of the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States, who are hereby constituted a board of audit, to examine and audit for settlement all the unfunded or floating debt of the District of Columbia and of the board of public works, hereinafter specified, namely, first, the debt evidenced by sewer certificates; secondly, the debt purporting to be evidenced and ascertained by certificates of the auditor of the board of public works; thirdly, the debt evidenced by the certificates of the auditor and the comptroller of the District of Columbia; fourthly, claims existing or hereafter created for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by the board of public works; fifthly, claims for which no evidence of indebtedness has been issued, arising out of contracts, written or oral, made by or on behalf of the District of Columbia; sixthly, all claims for private property taken by the board of public works from the avenues, streets, and alleys of the cities of Washington and Georgetown; and seventhly, all unadjusted claims for damages that may have been presented to the board of public works, pursuant to an act of the legislative assembly of the District of Columbia, entitled "An act providing for the payment of damages sustained by reason of public improvements or repairs," approved June twentieth, eighteen hundred and seventy-two, which last-named claims shall severally be examined and audited without regard to any examination heretofore made; and shall make a detailed and

tabular statement of all claims presented, the persons or corporations owning the same, and the amount found to be due on account of each; together with a tabular statement of the funded debt of the District of Columbia and of the cities of Washington and Georgetown of every kind and character whatsoever, giving the date of issue, time of maturity, and the rate of interest. And it shall further be the duty of said board to ascertain the amount of sewer tax or assessment paid by any person, persons, or corporation, under the act of the legislative assembly of said District, entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown, in the District of Columbia, and providing for the payment of the construction of sewers and drains therein by assessments, and issuing certificates therefor," approved the twenty-sixth day of June, eighteen hundred and seventy-three, and to prepare a tabulated statement thereof. *Said board of audit shall also issue to each claimant a certificate, signed by each of said board and countersigned by the Comptroller of said District, stating the amount found to be due to each and on what account;* * * *.

SEC. 7. That the sinking-fund commissioners of said District are hereby continued; and it shall be the duty of said sinking-fund commissioners to cause bonds of the District of Columbia to be prepared in sums of fifty and five hundred dollars, bearing date August first, eighteen hundred and seventy-four, payable fifty years after date, bearing interest at the rate of three and sixty-five hundreds per cent per annum, payable semiannually, to be signed by the secretary and the treasurer of said sinking-fund commissioners and countersigned by the comptroller of said District, and sealed as the board may direct; which bonds shall be exempt from taxation by Federal, State, or municipal authority, engraved and printed at the expense of the District of Columbia, and in form not inconsistent herewith. And the faith of the United

States is hereby pledged that the United States will, by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as will do so provide the revenues necessary to pay the interest on said bonds as the same may become due and payable, and create a sinking fund for the payment of the principal thereof at maturity. Said bonds shall be numbered consecutively, and registered in the office of the comptroller of said District, and shall also be registered in the office of the Register of the Treasury of the United States, for which last-named registration the Secretary of the Treasury shall make such provision as may be necessary. And said commissioners shall use all necessary means for the prevention of any unauthorized or fraudulent issue of any such bonds. And the said sinking-fund commissioners are hereby authorized to exchange said bonds at par for like sums of any class of indebtedness in the preceding section of this act named, including sewer taxes or assessments paid, evidenced by certificates of the auditing board provided for in this act.

II.

JOINT RESOLUTION approved March 14, 1876 (19 Stat., 211).

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia are hereby directed to transfer to the Treasurer of the United States, for the payment of the interest, due the first of February, eighteen hundred and seventy-six, on the bonds of said District, issued under the provisions of the act of Congress approved June twentieth, eighteen hundred and seventy-four, entitled "An act for the government of the District of Columbia, and for other purposes," the sum necessary to pay the same from any unexpended appropriations heretofore made by Congress, or from any

revenues derived from taxation on the property of said District of Columbia, subject to the requisition of said Commissioners, excluding funds raised for the support of public schools: *Provided*, That any further issue of three-sixty-five bonds under or by virtue of said act of Congress approved June twentieth, eighteen hundred and seventy-four, is hereby prohibited: *And provided*, That the said Commissioners are here directed to discontinue all work and labor on streets, avenues, bridges, sewers, canals, and structures of every kind the payment for which is to be made in three-sixty-five bonds of the District of Columbia: *And provided further*, That so much of the sixth section of the said act of June twentieth, eighteen hundred and seventy-four, as directs and requires the First Comptroller of the Treasury and the Second Comptroller of the Treasury to audit and adjust the floating and unfunded debt of the District of Columbia, and issue certificates therefor, and of the joint resolution continuing the board of audit to examine and audit the unfunded or floating debt of the District of Columbia, approved December twenty-first, eighteen hundred and seventy-four, and of the act to extend the time within which the board of audit of the District of Columbia may receive, audit, and allow certain claims that have never been presented to said board, approved March third, eighteen hundred and seventy-five, be, and the same is hereby, repealed.

* * *

III.

AN ACT providing a permanent form of government for the District of Columbia, approved June 11, 1878 (c. 180, 20 St., 102).

* * * * *

SEC. 4. That the said Commissioners may, by general regulations consistent with the act of Congress of March third, eighteen hundred and seventy-seven, entitled "An act for the support of the government of the District of

Columbia for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and for other purposes," or with other existing laws, prescribe the time or times for the payment of all taxes and duties of assessors and collectors in relation thereto. All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations to be made by Congress as aforesaid, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the auditor of the District of Columbia, certified by said Commissioners, or a majority of them; and the accounts of said Commissioners, and the tax collectors, and all other officers required to account, shall be settled and adjusted by the accounting officers of the Treasury Department of the United States. Hereafter the Secretary of the Treasury shall pay the interest on the three-sixty-five bonds of the District of Columbia issued in pursuance of the act of Congress approved June twentieth, eighteen hundred and seventy-four, when the same shall become due and payable; and all amounts so paid shall be credited as a part of the appropriation for the year by the United States toward the expenses of the District of Columbia, as hereinbefore provided.

SEC. 7. That the offices of sinking fund commissioners are hereby abolished, and all duties and powers possessed by said commissioners are transferred to and shall be exercised by the Treasurer of the United States, who shall perform the same in accordance with the provisions of existing laws.

AN ACT to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes. Approved June 16, 1880 (c. 243, 21 St., 284).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction of the Court of Claims is hereby

extended to, and it shall have original legal and equitable jurisdiction of, all claims now existing against the District of Columbia arising out of contracts made by the late board of public works and extensions thereof made by the Commissioners of the District of Columbia, and such claims as have arisen out of contracts made by the District Commissioners since the passage of the act of June twentieth, eighteen hundred and seventy-four, and of all claims for work done by the order or direction of said Commissioners, and accepted by them for the use, purpose, or benefit of the said District of Columbia, and prior to the fourteenth day of March, eighteen hundred and seventy-six; and all certificates of the auditor of said board of public works, all certificates issued by the auditor and comptroller of the District of Columbia, all claims based on contracts made by the levy court, all sewer certificates, all sewer taxes not heretofore converted into three-sixty-five bonds, all measurements made by the engineers of said District of work done under contracts made since February twenty-first, eighteen hundred and seventy-one, for which no certificates have been issued to and received by the contractor or his assignee, which certificates shall be prima facie evidence of the amount of work done, all claims based upon contracts made by the board of public works for which no evidence of indebtedness has been issued. Said Court of Claims shall have the same power, proceed in the same manner, and be governed by the same rules, in respect to the mode of hearing, adjudication, and determination of said claims, as it now has in relation to the adjudication of claims against the United States. * * *

SEC. 6. The Secretary of the Treasury is hereby authorized to demand of the sinking-fund commissioner of the District of Columbia so many of the three-sixty-five bonds authorized by act of Congress approved June

twentieth, eighteen hundred and seventy-four, and acts amendatory thereof, as may be necessary for the payments of the judgments; and said sinking-fund commissioner is hereby directed to issue and deliver to the Secretary of the Treasury the amount of three-sixty-five bonds required to satisfy the judgments, which bonds shall be received by said claimants at par in payment of such judgments, and shall bear date August first, eighteen hundred and seventy-four, and mature at the same time as other bonds of this issue; *Provided*, That before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of said bonds to the day upon which such claims were due and payable; and the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate fifteen millions of dollars: *Provided*, The bonds issued by authority of this act shall be of no more binding force as to their payment on the Government of the United States than the three sixty-five bonds issued under authority of the act of June twentieth, eighteen hundred and seventy-four.

SEC. 9. That the Treasurer of the United States, as ex officio sinking-fund commissioner of the District of Columbia, is hereby authorized and directed to redeem the outstanding certificates of the late board of audit, created by the act approved June twentieth, eighteen hundred and seventy-four, with the interest accrued on said certificates, by issuing and delivering to the owners or holders of such certificates bonds of the District of Columbia, as provided in section seven of the act approved June twentieth, eighteen hundred and seventy-four, entitled "An act for the government of the District of Columbia, and for other purposes," and acts amendatory thereof, said bonds to bear the same date, same rate of interest, and interest and principal be payable at same

time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to be issued by the said seventh section of said act, and shall be signed by the said Treasurer as ex officio sinking-fund commissioner of the District of Columbia, and numbered, countersigned, sealed, and registered as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates.

V.

AN ACT making appropriations to provide for the expenses of the government of the District of Columbia. * * * (C. 227, 23 Stat., 123, 131.)

* * * * *

That no payment shall be made of any certificate issued by the late board of audit of the District of Columbia under authority of the act approved June twentieth, eighteen hundred and seventy-four, that shall not be presented for payment within one year from the date of the approval of this act; * * *

VI.

AN ACT to provide for the payment of the eight per centum greenback certificates of the District of Columbia, and for other purposes. (Ch. 279, 28 Stat., 277.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Treasurer of the United States is hereby directed to pay to the owners, holders, or assignees of all board of audit certificates redeemed by him under the act approved June sixteenth, eighteen hundred and eighty, the residue of two and thirty-five hundredths per centum per annum of unpaid legal-rate interest due upon said certificates from their date up to the date of approval of said act providing for their redemption.

REVISED STATUTES DISTRICT OF COLUMBIA.

SEC. 713. The rate of interest upon judgments or decrees and upon the loan or forbearance of any money, goods, or things in action shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum or for a longer or shorter time, except as provided in this chapter.

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No. 683.

683

Brief of Valentine for Resp

IN THE SUPREME COURT OF THE UNITED STATES.

Filed June 1, 1898.

ELLIS H. ROBERTS, Treasurer of the United States, petitioner for a Writ of Certiorari,

vs.

THE UNITED STATES OF AMERICA EX REL. MARIE A. VALENTINE, Defendant in Error.

October Term, 1897.

BRIEF FOR RELATOR.

Opposing Petition for Writ of Certiorari.

This Court will not issue any writ upon the showing made by the petitioner in the above-entitled matter.

Assuming the general powers of the Court are sufficient to give it jurisdiction to issue such writ, in an emergency not otherwise provided for, yet this Court has in unmistakable language declared what the emergency *must* be which will warrant it in such extraordinary exercise of its powers.

In the recent case of Forsyth vs. Hammond, this Court says: "It is a power which will be sparingly "exercised, and only when the circumstances of the "case satisfy us that the importance of the question "involved, the necessity of avoiding conflict between "two or more Courts of Appeal, or between Courts of "Appeal and the Courts of a State, on some matter "affecting the interests of this nation in its internal or

" external relations demands such exercise " (166 U. S., p. 514).

No such elements appear in this case, and there is nothing in the petition which suggests any grounds for this Court to interfere with the deliberate action and the carefully expressed opinions unanimously rendered in both Courts below, in their efforts, so far as possible, to right an injustice done to the relator by the failure of the appellant to perform his plain ministerial duty.

There is not even a suggestion that there are any other claims which the decision in this case might affect. From the very nature of the case the claims involved in this matter stand alone. There is no conflict of authorities to be finally settled by this Court, nor any " interest of the nation " to be conserved by further litigating a matter which both the Courts below have characterized as " too plain to admit of any doubt."

The points made by the petitioner on this application were fully considered in the Court below. A copy of the brief of appellee answering the same is submitted herewith, and a careful perusal of the opinion of Mr. Justice COLE on the original application, and of Mr. Justice SHEPARD, who wrote the opinion of the Court of Appeals, will be sufficient to convince this Court that, even if this matter was one which came within the enumeration prescribed in Forsyth vs. Hammond, the plaintiff in error is absolutely without merit on any matter of law, and so absolutely without *equity* that the Court will not for one moment entertain this application to keep alive a litigation wherein the plaintiff in error has had his day in court to the fullest limit permitted by our statutes.

The application for the writ of *certiorari* should be denied with costs.

B. E. VALENTINE,
Attorney for Relator.

No. 86.

Brf. of Valentine for Respondent.

Filed Nov. 10, 1899.

In the Supreme Court of the United States

ELLIS H. ROBERTS, Treasurer of the United States,
Petitioner,

vs.

THE UNITED STATES EX REL. MARIE A. VALENTINE.

BRIEF FOR RELATOR.

The writ is to review the action of the Supreme Court of the District of Columbia, which directed the U. S. Treasurer to perform a ministerial duty under an Act of Congress, providing that certain interest should be calculated and paid by said Treasurer, on claims of which the principal had been paid.

Statement of Facts.

There was no controversy as to any of the facts alleged by the relator in her petition for a mandamus. The Court below, after so stating, proceeds to give a résumé of those facts, which is so concisely done that such recital (pp. 15–17) is referred to by the appellee, without repeating it, as the facts on which this Court is asked to make its decision.

New Objections Cannot Be Raised in the Appellate Court.

I. It will be observed that the grounds now urged by the appellant for the interference of this Court were never suggested by him as his reasons for refusal to pay the interest when he wrote his refusal to the relator (p. 9), nor were any such grounds assigned in his answer filed in court to the petition for mandamus (p. 10). He stood in each instance solely on the legal proposition that as he had not issued bonds in the place of the certificates, but had paid in cash the judgment recovered on the certificates, he had not redeemed them, and had "therefore no authority to pay the additional interest." He can not raise new questions in the Appellate Courts for the first time.

There Was Never Any Question as to Ownership of the Claims.

II. The treasurer well knew that the relator (who acted by the attorney who had prosecuted the proceedings from the beginning in the Court of Claims) was the owner of all the interest by virtue of due assignment. The Court below say: "Had his denial of payment been founded on the insufficiency thereof, after "due inquiry, the writ of mandamus would not lie. "Had that objection been set up, the relator might "have satisfied it by supplementary proofs or else by "proceedings at law for the establishment of her claim "as against Evans and immediate assignees; but it "was not raised, either directly or by implication, in "the written statement of the grounds upon which "payment was refused. Nor does the return of the "defendant to the order to show cause deny the genuineness or regularity of the relator's claim as assignee; hence, it must be regarded as admitted" (p. 18).

The Record Does Not Show Title in Any Other than Relator.

III. The suggestion that because the treasurer's receipt drawn September 12, 1890 (p. 12), on the expiration of the three months, from judgment June 12, 1890, (the time allowed for appeal) bears a date earlier than the assignment by Fisher's executors, therefore the executors were the owners at the time of payment, is far-fetched. The original warrants in payment of Court of Claims judgment had to be drawn in the name of the judgment creditors. The latter, by their assignment (p. 8), gave a "power of attorney irrevocable to collect and receive the same in our names or otherwise." So that even the original warrants receipted for by the attorney of record (p. 12) went to the assignee, who had power to endorse and collect them, as their owner at the time of their redemption by honoring of the warrants. The petition duly alleges "that "prior to the payment of the amount" all the claims assigned to Fisher were duly assigned to relator (p. 6, XX.).

The certificates were duly presented for redemption.

IV. To the suggestion of appellant that the certificates must not be considered as redeemed, because the petition does not allege they were presented for payment within one year from the date of the approval of the Act of July 5, 1884, the answer is :

Not only does the petition allege the presentation by saying the certificates were presented and remained *presend* with the treasurer from August 1st, 1874, to June 9th, 1890 (p. 3, VII.), and demand for their redemption made both before and after January, 1881, but the judgment rendered for their amounts and paid by the treasurer is a conclusive adjudication that they were duly presented.

It is frivolous to say the judgments do not show on what claim they were rendered. Judgment means the whole judgment roll, including the petition (set forth at p. 5, XVIII.). The paper set forth at page 12 is only part of the judgment—to wit, the *postea*.

The duty of the treasurer was purely ministerial and subject to mandamus.

V. There was no interference by the Court with any discretion vested in the treasurer. If the defendant had based his refusal to pay upon any dispute of the facts alleged by the relator, the Court might well have postponed the writ until the issue was decided elsewhere; but, as on all the facts in the petition being laid before him (p. 6, XXII.), he based his refusal solely on want of authority to pay; and, as "his duty was so plain in its terms as to admit for no room for construction" (p. 20), his answer was rightly overruled by the Court below.

The Court of Appeals' judgment in no wise criticises the issue of the writ.

VI. There is no foundation whatever for the pretense that the "certificates" are outstanding. They were surrendered when the judgments were entered in the Court of Claims, and, as said by the Court (p. 20), "are presumably on file there." They are merged in the judgment. Because the Court below, in answer to the defendant's *ex parte* request, says, "*if* these certificates were not surrendered in procuring the judgments upon them it is but just that the judgment in this case should be so amended as to require their surrender to the defendant as a condition precedent to the *execution* of the writ," it is no criticism on the action of the Court below in ordering the writ to issue, but it merely points out to the defendant his remedy if he can prove the certificates were not surrendered.

The Court of Appeals did not direct the judgment to be amended, but merely gave "*leave* to defendant to apply to amend, *if need be*" (p. 21). The relief sug-

gested in no wise affected the *issuing of the writ* as ordered, but merely its *execution* (p. 20).

VII. The writ should be dismissed and judgment affirmed with costs and interest, and in view of the unjustifiable delay which has been caused to the relator, for which compensation can in no other way be given, ten per cent. damages, under Rule 23, should be awarded.

B. E. VALENTINE,
Attorney for Relator.

His decision was not one made in the exercise of his ordinary official duties, but as a refusal to perform a merely ministerial duty imposed by a special statute; in other words, it was precisely the case herein this Court has said (Dunlap V. Black 28 U.S. 40) a mandamus may issue.

ROBERTS, Treasurer, *v.* UNITED STATES.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 86. Argued December 15, 18, 1899. — Decided February 5, 1900.

A judgment of the Court of Claims, under the act of June 16, 1880, c. 243, in favor of the claimant, against the District of Columbia, upon a certificate of the board of audit of the District, in an action commenced in 1880, is not affected by the provision in the act of July 5, 1884, c. 227, forbidding the payment of such certificates, not presented for payment within one year from the date of the passage of the latter act.

The evident purpose of the act of August 13, 1894, c. 279, was to give the balance of interest upon the certificates between 3.65 and 6 per cent to the original holders of the certificates, or their assignees, the interest upon which had been paid only at the former rate.

The right of the relator as assignee having been admitted, it is no longer open to inquiry.

If a public officer of the United States refuses to perform a mere ministerial duty, imposed upon him by law, mandamus will lie to compel him to do his duty.

In this case, as the duty of the Treasurer of the United States to pay the money in question was ministerial in its nature, and should have been performed by him on demand; mandamus was the proper remedy for failure to do so.

THE case is stated in the opinion.

Mr. Robert A. Howard for Roberts. *Mr. Solicitor General* was on his brief.

Mr. B. E. Valentine for the United States.

MR. JUSTICE PECKHAM delivered the opinion of the court.

A writ of certiorari was issued in this case to the Court of Appeals of the District of Columbia, for the purpose of reviewing a judgment of that court affirming a judgment of the Supreme Court of the District, which awarded to the relator, Marie A. Valentine, a writ of mandamus to compel the petitioner, who is the Treasurer of the United States, to pay her, as assignee, a residue of 2.35 per cent interest upon certain certificates issued by the board of audit of the District of Columbia pursuant to the provisions of section 6 of the act approved June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes." 18 Stat. 116, 118, c. 337.

The facts upon which the controversy arises are uncontradicted, and are as follows: One Charles E. Evans who, previous to 1874, had done a large amount of work for the District in laying concrete and brick pavements in the city of Washington, duly presented his claims on that account to the board of audit constituted under the act above mentioned, which board, after an examination of such claims, executed, on the first of August, 1874, the two certificates which form the basis of the claim of the relator, each certificate being dated on that day, one of which acknowledged an indebtedness to him on the part of the District of Columbia of $19,616.25 and the other $909.40. They were not, however, delivered to Evans, because at the time they were made a claim had been set up by the authorities of the District that Evans was liable for the expense of repairs which were needed on pavements laid by him, (which claim, however, as it afterwards appeared, was not well founded,) and the board of audit, instead of delivering the certificates to Evans, withheld them from him, and at or about their date delivered them to the Commissioners of the District, who held them as collateral security for the payment of any liability of Evans for the repairs mentioned. They remained from August, 1874, until June 9, 1890, in a

tin box in the office of the Treasurer of the United States, who held it and its contents subject to the control of the Commissioners of the District.

By reason of this refusal to deliver the certificates and their retention in the hands of the Treasurer, Evans was unable to avail himself of the right given by the act of 1874 to exchange such certificates for the 3.65 bonds mentioned in that act, and for the same reason he was unable to avail himself of the provisions of section 9 of the act approved June 16, 1880, 21 Stat. 284, c. 243, providing for the redemption of the certificates created by the act of 1874. An action was therefore commenced in December, 1880, in the Court of Claims by the assignee of Evans to recover judgment against the District of Columbia upon those certificates, under the provisions of section 1 of the above act of 1880. In this action, in addition to the claims upon the certificates already mentioned, Fisher, the assignee, included a large amount of other claims against the District, which had also been assigned to him by Evans.

In 1884, Congress passed an act, approved July 5, 1884, c. 227, 23 Stat. 123, 131, providing that no payment should be made of any certificate issued under the act of 1874 that should not be presented for payment within one year from the date of the approval of the act of 1884.

After its commencement, (the certificates still remaining in the custody of the Treasurer,) the action above mentioned continued pending until some time during the December term, 1889, of the Court of Claims, when the executors of the will of Fisher, the assignee, were substituted as parties plaintiff in the action upon the suggestion of the death of Fisher having been duly made upon the record, and the action was revived in the names of the executors of Fisher's will.

In June, 1890, a settlement of that action was agreed upon, by the terms of which the two certificates were to be delivered to the plaintiffs, and the other matters in dispute therein were to be withdrawn from the court by the discontinuance of the action. Pursuant to that settlement and on June 9, 1890, under the advice of the Assistant Attorney General in charge of the case, the certificates were delivered to the plaintiff's

attorney, who thereupon presented them to the Treasurer and requested him, in his capacity as *ex officio* commissioner of the sinking fund of the District of Columbia, to issue in exchange for them the 3.65 bonds authorized by the act of Congress of 1874. The Treasurer refused to redeem the certificates or to issue bonds for the payment thereof, or in any way to pay the same, until the parties had obtained a judgment in the Court of Claims in the action already mentioned, which should provide for their payment. Accordingly the plaintiffs in that action asked and obtained leave to amend their petition by striking out all reference to any other causes of action than those upon these two certificates. The amendment was consented to by the Assistant Attorney General, and on June 12, 1890, a judgment was duly obtained in favor of plaintiffs and against the District of Columbia for the recovery, "in the manner provided by the act of June 16, 1880, chapter 243," of the sums mentioned in the certificates. The judgment roll in the case contained the petition in which these particular certificates were set out in full, and it showed that the judgment entered by the Court of Claims was recovered on those certificates and on them alone. There was thus evidence on record which showed the cause of action on which the judgment was based. On September 12, 1890, the Treasurer paid these certificates with interest from their date, August 1, 1874, to September 11, 1890, at 3.65 per centum, by paying the judgment entered by the Court of Claims. Subsequently to that time the executors of Fisher, the assignee of Evans, assigned to one Robinson all interest in the claims and demands against the District, and Robinson subsequently assigned the same to the relator. Thus some sixteen years after the certificates had been duly made under the authority of the act of 1874 they were finally redeemed, the delay having been caused by their retention as above stated and by the refusal of the Treasurer to deliver them to their owner.

On August 13, 1894, Congress passed an act, 28 Stat. 277, c. 279, the first section of which reads as follows:

"That the Treasurer of the United States is hereby directed to pay to the owners, holders or assignees of all board of audit

certificates redeemed by him under the act approved June 16, 1880, the residue of two and thirty-five hundredths per cent per annum of unpaid legal rate interest due upon said certificates from their date up to the date of approval of said act providing for their redemption."

The relator as assignee, by her attorney, made demand upon the Treasurer for the payment of the balance of the interest as provided for in the above act, and on November 3, 1897, the Treasurer refused such demand, and wrote the following letter to the attorney:

"SIR: Your letter of the 27th ultimo, enclosing a petition for the payment of interest on certain board of audit certificates, under the act of Congress approved August 13, 1894, is received.

"You will note that the act referred to provides for additional interest to be paid only upon board of audit certificates redeemed by the Treasurer under the act of June 16, 1880. Neither of the certificates recited in your petition was redeemed by the Treasurer, and they are not in his possession.

"You state that certain judgments of the Court of Claims were issued in lieu of these certificates. These judgments were paid by this office in the manner prescribed by law, but neither of them states that they were issued in lieu of or upon debts of the District of Columbia represented by board of audit certificates.

"The Treasurer has therefore no authority to pay the additional interest you demand."

The foregoing facts were set forth in the petition of the relator to the Supreme Court of the District of Columbia asking for a mandamus to compel the Treasurer to make the payment demanded.

In answer to the petition the Treasurer alleged "that the certain board of audit certificates, so called, in the said petition mentioned, namely, the certificates numbered 8879 and 19,429, were not redeemed by him or any person holding the office of

Treasurer of the United States at any time, and that the only moneys paid by any Treasurer of the United States on account of any of the matters or things in the said petition mentioned as having relation to the said certificates, or either of them, were paid upon certain judgments of the Court of Claims of the United States, as appears by the transcript from the records of the Treasury Department of the United States, hereto annexed and made part hereof, and that the defendant has no official knowledge, nor has he any official record in his office, showing or tending to show upon what claim or claims either of the said judgments was based."

Nothing but a transcript of the decree contained in the judgment roll was annexed to the return. The relator demurred to the return, and upon these pleadings the cause came on for hearing before the Supreme Court, which ordered a writ of mandamus to issue as prayed for. Upon appeal to the Court of Appeals that court affirmed the judgment, and the Treasurer applied for and obtained a writ of certiorari for the purpose of procuring a review of the judgment by this court.

Upon reading the return made by the Treasurer to the petition for the writ it will be seen that the facts upon which he bases his defence are that he did not redeem the certificates in question, and that the only moneys paid by any Treasurer of the United States were paid on this judgment of the Court of Claims already mentioned, and that it did not appear in any official record in his office upon what claim or claims the judgment of the Court of Claims was based.

The first question which arises, therefore, on this record is whether the Treasurer did redeem these certificates within the meaning of the act of 1894. The act of 1884 did not prohibit their redemption, for they were in suit under the provisions of section 1 of the act of 1880, long before the passage of the act of 1884, and provision was made in the act of 1880 for the payments of the judgments rendered by the Court of Claims upon presentation to the Secretary of the Treasury of a certified copy of such judgments. That they might be founded upon certificates was immaterial, for it

cannot be supposed that Congress by the act of 1884 meant to prohibit the payment of certificates which were in suit under the act of 1880, and upon which judgment might thereafter be rendered by the Court of Claims. Full effect can be given to the act of 1884 by confining it to the prohibition of payment of certificates which might, after the year, be presented in that form for payment, leaving the provisions for payment on suit brought under the act of 1880 in full force.

Taking this case as made by the record, we find that it is not disputed that the certificates were issued under the act of 1874, duly signed by the board of audit therein provided for, and delivered (without the consent of Evans) to the authorities of the District upon their unfounded claim that they were entitled to their possession as collateral security as already stated. It is not disputed that an action was commenced in the Court of Claims under the act of 1880 to recover against the District of Columbia upon the certificates, as well as upon other claims against the District. It is not disputed that upon a compromise made, all other causes of action were stricken from the petition, that the petition as amended contained a full description of the certificates, and an allegation that they were issued by the board of audit under the act of 1874, and that judgment was recovered upon such certificates, and upon them only, and for their payment pursuant to the act of 1874, and that pursuant to that judgment the Treasurer paid the amount thereof, together with interest on the certificates from the date of their issue in 1874 to September 11, 1890, the day before their payment.

Upon these facts we have no doubt that the certificates were redeemed within the meaning of the act of 1894. At the time of the judgment in the Court of Claims they were in the hands of the plaintiff in the action mentioned and were valid instruments in his hands, and his sole cause of action was based upon them, and the judgment entered by the Court of Claims necessarily declared their validity and the right of plaintiff to have the same paid as stated in the judgment. When the Treasurer subsequently paid that judgment, did he not therein and thereby redeem these certificates? If the certificates

themselves had been presented to the Treasurer and he had paid them, they would then, of course, have been redeemed. Were they any the less redeemed because an action had been brought upon them and the court had declared their validity and directed their payment, by a judgment duly entered to that effect, which judgment was subsequently paid by the Treasurer? Such payment, it seems to us, was a redemption of the certificates within the meaning of the act.

The evident purpose of the act of 1894 was to give the balance of interest between 3.65 and 6 per cent to those persons, or their assignees, to whom certificates had been given and the interest upon which had been paid only at the former rate. In all such cases where the certificates had been redeemed by the Treasurer, the additional interest was to be paid, and we cannot doubt that under this act the certificates were redeemed when paid by the Treasurer by virtue of the judgment which had been recovered on them and which was directed to be paid pursuant to the act of 1874. The act of 1894 did not limit the payment to those who had succeeded in exchanging their certificates for bonds bearing interest at the rate of 3.65 per cent. It was through no fault of the holders of these particular certificates that they had not been exchanged for such bonds, but the exchange had not been effected because the authorities of the District improperly retained custody of them, and refused to deliver them to their rightful owner.

The act of 1894 plainly relates to and speaks of the certificates which had been redeemed under the act of 1880, and these certificates had been so redeemed.

The further objection made by the Treasurer, that he had in his office no official record showing or tending to show upon what claim or claims the judgment of the Court of Claims was based, is, under the admitted facts in this case, wholly immaterial.

The judgment roll in the action is of record in the Court of Claims, and that roll showed precisely and in detail that the judgment was recovered upon those specific certificates, and upon nothing else, and when the Treasurer pays such judgment there is thus record evidence that he has paid the certificates

mentioned in the judgment roll, upon which certificates the judgment itself was recovered.

This is all the defence upon the facts that is made to the issuing of the writ so far as appears by the return made by the Treasurer to the application for mandamus, but upon the argument in this court the further objection was taken that the relator was not such an assignee as was within the contemplation of the act of 1894, because, as was stated, she was not such assignee at the time of the payment of the certificates made by the Treasurer.

It is somewhat late to raise this defence, but we think there is nothing in the objection. These certificates had been paid at the rate of interest of 3.65 only, and the act of 1894 intended to give to those people who were their original owners, or who had become assignees of such owners, although subsequent to the payment of the certificates, the right to recover this additional interest. But if the act were construed as intending to provide for the payment of interest to those persons who were the owners of the certificates at the time when they were redeemed, it could not with any force be argued that such persons might not assign their claim to the balance of the interest provided for in the act of 1894 after the passage of that act. Hence if the defendant had set up in his return any such objection, it might have been obviated by proof that the owners of the certificates when redeemed had after the passage of the act of 1894 assigned their right to the interest mentioned therein to the relator. The Treasurer made no such objection to payment, either in his letter to the attorney for the relator before this proceeding was commenced, or in his return herein. The right of relator, as assignee, has been admitted, and the Treasurer placed his objections on grounds altogether different.

The remaining and most important objection is that this is not a case in which the writ of mandamus can properly be issued to one of the executive officers of the government.

The law relating to mandamus against a public officer is well settled in the abstract, the only doubt which arises being whether the facts regarding any particular case bring it within

the law which permits the writ to issue where a mere ministerial duty is imposed upon an executive officer, which duty he is bound to perform without any further question. If he refuse under such circumstances, mandamus will lie to compel him to perform his duty. This is the principle upheld by this court in *United States* v. *Black*, 128 U. S. 40, and upon the authority of that case the defendant claims that no mandamus can be issued against him.

The writ was refused in the *Black case*, because, as the court held, the decision which was demanded from the Commissioner of Pensions required of him, in the performance of his regular duties as commissioner, the examination of several acts of Congress, their construction and the effect which the latter acts had upon the former, all of which required the exercise of judgment to such an extent as to take his decision out of the category of a mere ministerial act. A decision upon such facts, the court said, would not be controlled by mandamus. The circumstances under which a party has the right to the writ are examined in the course of the opinion, which was delivered by Mr. Justice Bradley, and many cases upon the subject are therein cited, and the result of the examination was as just stated.

In this case the facts are quite different. There is but one act of Congress to be examined, and it is specially directed to the Treasurer. We think its construction is quite plain and unmistakable. It directs the Treasurer to pay the interest on the certificates which had been redeemed by him, and the only question for him to determine was whether these certificates had been redeemed within that meaning of that act. That they were, we have already attempted to show, and the duty of the Treasurer seems to us to be at once plain, imperative, and entirely ministerial, and he should have paid the interest as directed in the statute.

This case comes within the exception stated in the *Black case*, that where a special statute imposes a mere ministerial duty upon an executive officer, which he neglects or refuses to perform, then mandamus lies to compel its performance; but the court will not interfere with the executive officers of

the Government in the exercise of their ordinary official duties, even when those duties require an interpretation of the law, the court having no appellate power for that purpose. On this last ground the court denied the writ.

Unless the writ of mandamus is to become practically valueless, and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required.

In this case we think the proper construction of the statute was clear, and the duty of the Treasurer to pay the money to the relator was ministerial in its nature, and should have been performed by him upon demand. The judgment of the Court of Appeals must be

Affirmed.